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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	08-CR-640
v.	:	U.S. Courthouse
	:	Brooklyn, New York
ROBERT SIMELS	:	
ARIENNE IRVING	:	August 10, 2009
Defendants.	:	9:30 o'clock a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JOHN GLEESON
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Government:	BENTON J. CAMPBELL United States Attorney BY: STEVEN L. D'ALESSANDRO MORRIS FODEMAN DANIEL BROWNELL Assistant U.S. Attorneys
For the Defendants:	GERALD SHARGEL, ESQ. EVAN L. LIPTON, ESQ. For Robert Simels JAVIER A. SOLANO, ESQ. LAWRENCE BERG, ESQ. For Arienne Irving
Court Reporter:	Gene Rudolph 225 Cadman Plaza East Brooklyn, New York 11201 (718) 613-2538

Proceedings recorded by mechanical stenography, transcript
produced by CAT.

1 (The following occurred in the absence of the jury.)

2 THE COURT: Good morning.

3 Last I heard we are still missing a juror.

4 Have a seat, please.

5 We are no longer missing a juror.

6 Are you ready?

7 MR. D'ALESSANDRO: Yes, Your Honor.

8 There is one point with regard to the jury charge we
9 just noticed.

10 THE COURT: Yes?

11 MR. D'ALESSANDRO: On page 15.

12 MR. SHARGEL: Sorry?

13 MR. D'ALESSANDRO: Page 15, Count Two.

14 THE COURT: Yes.

15 MR. D'ALESSANDRO: It says with regards to Selwyn
16 Vaughn attempt to use intimidation on or threaten or corruptly
17 persuade.

18 I believe we charged in the indictment simply
19 corruptly persuaded Selwyn Vaughn.

20 THE COURT: Okay. I will take out "intimidation or
21 threaten."

22 MR. D'ALESSANDRO: Correct.

23 THE COURT: Great.

24 All right. Bring in the jury, please.

25 (Continued on next page.)

1 (Jury present.)

2 THE COURT: Good morning, everybody.

3 I hope you had a nice weekend.

4 Have a seat.

5 Nice to see you again.

6 All right. We are at the stage of the trial we call
7 summations, closing arguments. Like openings, what you will
8 hear today directly from the lawyers does not consist of
9 evidence. You have heard all the evidence in the case. It is
10 the testimony that was given from the witness stand and the
11 exhibits I received in evidence during the course of the
12 trial.

13 But the fact that these arguments, these closing
14 arguments, are not evidence does not mean they are not
15 important. They are important.

16 It is the lawyer's opportunity to argue to you what
17 they -- the facts that they believe the evidence proved, the
18 inferences that they want you to draw from the facts that they
19 will argue have been proved.

20 That's what we will do today. You will hear first
21 from Mr. D'Alessandro on behalf of the government. Then you
22 will hear from each of Mr. Shargel and Mr. Solano on behalf of
23 the defendants. Then, reflecting the fact that the government
24 at all times bears the burden of proving the defendant's guilt
25 beyond a reasonable doubt, the rules allow for the government

Summation - D'Alessandro

1642

1 to make a rebuttal summation after the defense summations.
2 You will hear first and last from the government, in-between
3 from Mr. Shargel and Mr. Solano.

4 All right. Mr. D'Alessandro, are you ready to go?

5 MR. D'ALESSANDRO: Yes, I am, Your Honor.

6 THE COURT: Go right ahead.

7 MR. D'ALESSANDRO: Thank you very much.

8 Good morning, everyone.

9 The license to practice law is not a license to
10 break the law. It seems like a painfully obvious principle.
11 But those were the words that my colleague Daniel Brownell
12 used to open the government's case against the defendants
13 Robert Simels and Arienne Irving.

14 Why did we need to say something that's so painfully
15 obvious? Because the actions of these defendants is so
16 outrageous, so upsetting that we wanted to make sure that this
17 fundamental principle wasn't lost, as was so obviously ignored
18 by them.

19 It needed to be said. It needed to be said because
20 these defendants think the rules don't apply to them. They
21 are wrong. They are lawyers. Their job is to uphold the law,
22 not break it.

23 Whatever their obligations are to their client comes
24 secondary to their obligations to the law.

25 No one is above the law.

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1 When these defendants decided to obstruct justice,
2 decided to tamper with witnesses, in order to beat the case
3 for their client Roger Khan, they stopped being criminal
4 defense attorneys. They just became criminals.

5 Obstruction of justice, tampering with witnesses,
6 said a lot during this trial. It sounds like lofty principle.
7 It sounds like legalese.

8 Let's be clear about what we have been talking about
9 in this case. What we are talking about is these defendants
10 sending violent people to find people they think are going to
11 be witnesses and shut them up. Shut them up, or if they dare
12 speak, say the words they want them to say.

13 Offer them money. Offer them fear. Offer them
14 violence. Offer whatever it's going to take. Offer it to
15 them, offer it to their families, offer it to their friends.

16 The plan was simple. The consequences couldn't be
17 more terrifying.

18 Just like any plan, you need somebody at the head,
19 somebody who is the driving force, somebody that understands
20 what the plan is, makes the decisions and makes sure things
21 get followed through.

22 In this case, Robert Simels was that driving force,
23 one of the guys at the head, to make sure that the messages
24 were sent out and action was taken.

25 It fell to Simels to communicate with Khan's gang

1 members, to make sure that their boss's wishes were granted,
2 to make sure that they understood what needed to be done, to
3 make sure that their boss got back to them in Guyana.

4 The evidence shows that he did that time and time
5 again.

6 And like any plan, you also need somebody to help,
7 somebody that understands what the goal is and provides
8 meaningful assistance in order to make sure that that
9 objective is achieved.

10 In this case, Arienne Irving was one of those people
11 that helped.

12 Let me say this about Ms. Irving. She is a young
13 lawyer. I suspect that during the trial some of you may have
14 had sympathy for her. I have no doubt, that but for being
15 exposed to the corrupting influence of that man, she may very
16 well likely never have been in a courtroom in any other
17 capacity than as an attorney rather than a defendant.

18 But, ladies and gentlemen, like us all, Ms. Irving
19 can make choices. It's her choices that put her in this
20 courtroom. It's her choices that put her at that table. It's
21 her choices that put her in that chair as a defendant. And
22 choices have consequences.

23 She chose to break the law. She chose to be part of
24 this criminal plan. She chose to help it reach its objective.

25 "I was just doing my job" is never a defense, even

1 if that job is defending a client who is charged with crimes.

2 Let's take a few minutes to talk about the
3 defendant, the client, rather, Roger Khan . Selwyn Vaughn,
4 you remember him, he told you a lot about Roger Khan. Khan's
5 involvement in drugs, Khan's involvement in violent acts,
6 kidnapping, murder, torture.

7 Vaughn told you about the murders of Ronald Waddell
8 and Donald Allison, how Khan believed that they were assisting
9 the Buxton gang, were involved in some way, and Selwyn Vaughn
10 told about his involvement, that he was the spotter. He was
11 the lookout for these guys. When he found these men, he
12 reported it to Khan.

13 What happened? They were gunned down, like dogs.
14 Car pulls up and their bodies were riddled with bullets.

15 That's the murder of Donald Allison and Ronald
16 Waddell.

17 Who did it? Khan -- who were Khan's gang members?
18 Selwyn Vaughn told you about them too.

19 He told you about Ricardo Rodrigues, Khan's partner
20 in the drug game in Guyana.

21 Barry Dataram, also known as Kevin or Mogatoni. He
22 was the guy that was responsible, he managed Khan's drug
23 importations -- exportations, excuse me -- into the United
24 States and Europe, the market where he was going to sell his
25 drugs.

1 He told you about Paul Rodrigues, Ricardo
2 Rodrigues's cousin.

3 Gerald Pereria, Fredboy Willabus, Lloyd Roberts,
4 Sean Belfield.

5 Who are those guys? Those were members of Khan's
6 muscle, the Phantom Squad. Nice name. These are the guys who
7 were former or ex-police officers. These are the guys that
8 when Khan wants somebody dead, when he wants somebody
9 kidnapped, these are the guys he sends.

10 Paul Rodrigues, Fredboy Willabus, Lloyd Roberts,
11 Sean Belfield, those are the four gunmen who were responsible
12 for the murder of Donald Allison and Ronald Waddell.

13 There is no dispute that these are the same people
14 that the defendants Robert Simels and Arienne Irving are
15 talking to. They are on tape, talking about Sean and Paul.

16 They talked about it extensively at meetings,
17 referring to them by their real names and their nicknames.
18 You know Fudgey. You know Fudgey's real name? Fredboy. Sean
19 Belfield, we call him Backup. Dataram, Kevin Mogatoni. Paul
20 Rodrigues, Paulo.

21 There are instant messages, where they are talking
22 back and forth.

23 There is another guy Regan. Remember him? Regan
24 was the guy that worked at Willems Timber for Roger Khan.
25 Also responsible for giving ammunition and guns to Khan from

1 Brazil.

2 Robert Simels even on the stand admitted, that looks
3 like him. I know that guy. I know this guy.

4 But he really kind of had to, right? He knows we
5 have all those instant messages.

6 Your Honor, may I have the Elmo up, please?

7 THE COURT: Yes.

8 MR. D'ALESSANDRO: Thank you.

9 We have a directory that was taken from his office.
10 I think the screen is going to take a little bit to
11 warm up.

12 THE COURT: It is looking that way.

13 Is it on the juror screen?

14 Go ahead.

15 MR. D'ALESSANDRO: Gerald Pereria, home address,
16 phone numbers, email address.

17 Paul Rodrigues, home address, phone numbers.

18 Regan Mark, Willems Timber.

19 Barry Dataram with his birth date.

20 Fudgey, that's Fredboy Willabus, right here. Look
21 at this guy's email address, Silent Assassin. Home address,
22 phone number.

23 Sean Belfield, two phone numbers.

24 He knows we have this. So it would be too much a
25 stretch of the imagination for him to say he doesn't know it.

1 You remember that? In the recordings? Talks --
2 he's coaching Selwyn Vaughn to lie on the stand. When you
3 testify they will ask you questions on cross-examination. To
4 the extent, do you know Ricardo Rodrigues? He says, it would
5 be too much of a stretch of the imagination for you to say,
6 you don't know him. So to the extent you have to say I know
7 him. That's the litmus test. That's the test for getting the
8 truth. If -- when it's too much of a stretch of the
9 imagination, when he could pull one over on you.

10 But we have this. So he is going to have to admit
11 that he knows these people and those are the people he's
12 talking to.

13 I asked him, do you know that these people are
14 involved, you expect these people are involved in violent
15 acts? Whoa, violent, no. What? These guys? Are you kidding
16 me?

17 Remember what his answer was? I only remember these
18 men, how they presented themselves. They were well dressed.
19 They were well spoken. They were well mannered.

20 Excuse me?

21 These guys are killers. These guys are assassins.
22 They are executioners.

23 So he is not going to say that on the stand. He
24 can't say that on the stand.

25 But he doesn't have to. On the screen in evidence

1 is 401-T-3. This is a portion of the meeting on May 13th
2 between Robert Simels and Selwyn Vaughn.

3 If you recall there was a portion during this
4 meeting where Robert Simels asks Selwyn Vaughn about the
5 murder, certain murders. He asks him about the murder of
6 Donald Allison. What do you know if anything about Donald
7 Allison dying?

8 Well, I know he was killed.

9 Right. So he was killed outside of his gym.

10 He was killed outside of his gym. Apparently a
11 drive-by.

12 Simels, a lot of bullets.

13 What is Robert Simels saying here? I know how
14 Donald Allison was killed. He was killed outside of his gym.

15 Selwyn Vaughn says a drive-by.

16 Robert Simels says yes, a lot of bullets.

17 Eerily similar from how Selwyn Vaughn described
18 Donald Allison dying, outside his gym, car pulls up, riddled
19 with bullets?

20 So I want to know what happened. Look what he asks,
21 okay. So Allison gets killed. Do you speak to Roger after he
22 gets killed?

23 Yes. I spoke to him afterwards.

24 Did Roger say he did it?

25 We just talked brief, you know, I called, yeah, you

1 know, I hear this.

2 I mean, did he say to you, I took him out or was it
3 somebody unknown who shot him?

4 Why is he asking these questions? Because he knows
5 Roger Khan is involved in this murder. Remember, at this
6 point he's telling Selwyn Vaughn, I want you to testify. We
7 are going to get into it more specifically in a minute, but if
8 you recall what Selwyn Vaughn tells him at this meeting.
9 Selwyn -- he says Roger Khan's my boss. Roger Khan is a drug
10 dealer. My cousin is in jail for killing a guy because of a
11 drug deal for Roger that went bad.

12 Selwyn Vaughn is a horrible witness. If Selwyn
13 Vaughn gets on the stand at the Roger Khan trial, he's going
14 to convict Roger Khan. He's a witness for the prosecution.
15 Robert Simels understands this. He wants to know what Selwyn
16 Vaughn is going to say on the stand.

17 So he knows that Roger Khan was involved in this.
18 He's trying to get it out of Selwyn Vaughn so he can coach him
19 to say the contrary. Just like everything else.

20 Selwyn Vaughn says I don't want to get into it right
21 now. So look what Robert Simels does.

22 He starts asking him questions. Do you know
23 Pereria?

24 Pablo?

25 Paul Rodrigues?

1 Sean? That's Sean Belfield, Backup.

2 Roberts, Lloyd Roberts?

3 Who is he talking about? Gerald Pereria, Paul
4 Rodrigues, Lloyd Roberts, Sean Belfield. He just named three
5 of the four people that were personally responsible for the
6 death of Donald Allison. Is that a coincidence? No. He is
7 signaling to Selwyn Vaughn. You can tell me. I know. Just
8 tell me. Tell me so we can get over this so I can start
9 coaching you to lie saying Roger didn't have anything to do
10 with this.

11 Look what he asks about them. When you were with
12 them, the Phantom Squad, Paul Rodrigues, Pereria, Lloyd
13 Robert, Sean Belfield, when you were with them, did you ever
14 see them actually kill someone or was it always the police who
15 actually did the killing?

16 Vaughn explains to him, because with everybody
17 firing, you know, it was hard to determine, you know, who
18 might fire the fatal shot.

19 Okay. So you were present when people were killed.

20 I don't want to say I was present. I might have
21 been in the vicinity.

22 He knows, he knows everything about this death.

23 But he can't tell you that on the stand. He can't
24 admit to you that these people that I am sending out to go
25 find people are capable of violent acts, horrific acts,

1 execution. He can't say that.

2 Do you know these men are capable of kidnapping? Do
3 you have any reason to suspect? Kidnapping? What are you
4 talking about? These guys all wear nice slacks. They
5 properly conjugated their verbs. They said please and thank
6 you. Why would I think they are involved in kidnappings?

7 This is in evidence 401-T-3, this part of the
8 May 13th meeting.

9 Mr. Simels says, they always seem -- he's talking
10 about the guys in Guyana. They always seem when I say I want
11 to see -- or I want to see this one, it's always
12 they're -- they're going to come.

13 Because you see what happens is that -- Mr. Simels,
14 and I tell them, I tell Sean, Sean Belfield, and the rest of
15 them, the rest of who, the rest of the Phantom Squad, I'm not
16 asking you whether or not they are willing to come. I am
17 telling you to bring them to me.

18 Vaughn, exactly. As simple as that.

19 June 11th, this is T-10. On page four, line 13.

20 Paul says to me, you know this one doesn't really
21 want to help anymore. And I say, you know what, I'm not
22 asking whether or not they want to help. They owe whatever
23 they owe to this guy.

24 He is talking about Paul Rodrigues, what these
25 people -- to Roger Khan.

1 Simels, and you tell Sean, Sean Belfield, to get
2 that guy there. You tell Roberts, Lloyd Roberts, I want these
3 people there at the hotel. If they don't want to come, they
4 don't want to come. I want them at the hotel. They can tell
5 me to my face so I can tell Roger that they don't want to help
6 them.

7 Exactly.

8 I don't want to hear from anybody that they don't
9 want to come. Bring them to me. They can say no, they can go
10 on their way.

11 Imagine that scene. You are in Guyana. Knock on
12 the door. Paul Rodrigues, Lloyd Roberts, Sean Belfield show
13 up at your door. These guys are killers. Khan's attorney
14 wants to see you. Orders from the attorney, bring them to me.

15 They don't want to come. They don't want to come.
16 I want them there.

17 Brought there. They can say they don't want to
18 help. I want them to tell it to my face.

19 Can you imagine what that person would be feeling
20 talking to the lawyer for Roger Khan, that they don't want to
21 help Roger Khan?

22 What is he telling you? They can tell me to my face
23 they don't want to help Roger. What do you think he is gong
24 to do with that information? Tell Roger Khan. How do you
25 think that person feels in that situation?

1 June 20th, T-13. Page 25, line 17. They are
2 talking -- he's relating a conversation that he had with Paul
3 and Jerry. That's Paul Rodrigues and Gerald Pereria.

4 Line 33, because I said to them, do you think you
5 could tell Roger to his face what you're telling me, that you
6 can't find this guy, that you can't bring him to me? If he
7 told you to bring somebody to him, you bring him.

8 Vaughn, exactly. And they know how to bring people.

9 These are executioners. These are assassins. These
10 are kidnapers. These are not -- I don't care if they are
11 wearing Dockers. I don't care if they are saying please or
12 thank you. They're killers. They are kidnapers. And he
13 knows it. But he can't admit that to you on the stand.

14 He knows the truth. He knows what these men do. He
15 knows what these men are for. He knows he can use these men
16 to help their boss get out of jail. But he can't admit that
17 to you.

18 Let's take a few minutes to talk about Robert
19 Simels's testimony.

20 Before I do I have to make something absolutely
21 clear. He didn't have to take the stand. He did not have to
22 take the stand. If he didn't, the judge would instruct you
23 that you cannot hold this against him. But he did take the
24 stand. So you are permitted to evaluate his testimony, to
25 gauge his credibility.

1 I anticipate the judge is going to give you some
2 instructions on how you do that. If I say anything that's
3 different from what the judge says about the law in the
4 instructions, ignore me. Listen to the judge.

5 But you know what? It's not rocket science. It's
6 the same thing you do in your everyday walk of life. You
7 don't check your common sense at the door. You bring it into
8 the courtroom. That's why we have jurors. So that they can
9 use their common sense from their everyday experience, to
10 determine the facts, to determine who is telling the truth.

11 So ask yourself, do you believe him? Think about
12 the way that he testified. Think about the difference the way
13 he testified when Mr. Shargel asked him questions and when I
14 asked him questions.

15 Did you think he was being honest? Did you think he
16 was trying to hide something?

17 When Mr. Shargel asked him questions, he was
18 upright, he was looking at all of you. He couldn't be nicer
19 than to answer all the questions that were asked.

20 When I asked him questions, he didn't want to answer
21 my questions. I didn't ask him questions that were this
22 (indicating) wide.

23 At any point in dealing with Selwyn Vaughn did you
24 ask him to intimidate people?

25 No. I didn't do that.

1 I played the calls for him. I asked him to respond
2 to what he said and not on paper. But what he said and how he
3 said it. He didn't like those questions.

4 I respectfully submit, ladies and gentlemen, that
5 Robert Simels took that stand and lied. He looked you in the
6 eyes and lied to your faces. When I asked him questions, it
7 took eight times, the judge instructed him eight times, answer
8 the question.

9 Is that somebody who is testifying truthfully? Who
10 is trying to give the truth, the whole truth and nothing but
11 the truth? Or someone that's being evasive, who is trying to
12 hide the truth?

13 These are portions of the trial transcript. On page
14 1449, the judge had to instruct him, don't volunteer.

15 I'm sorry, Your Honor.

16 Mr. Shargel --

17 MR. SHARGEL: I object to this. This isn't
18 evidence.

19 THE COURT: Yes. Sustained.

20 Focus on the testimony.

21 MR. D'ALESSANDRO: Eight times. Why? If he was
22 there to tell the truth, the whole truth and nothing but the
23 truth, why did he have to be instructed to answer the
24 questions?

25 Let's not forget. He's not just anybody. He's a

Summation - D'Alessandro

1657

1 lawyer. And not just a lawyer. He's a trial lawyer, with
2 over thirty years of experience. He knows his obligations on
3 the stand. He knows the difference between direct,
4 cross-examine and redirect.

5 (Continued on next page.)
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1 MR. D'ALESSANDRO: (Continuing.)

2 He knows the differences between a truth and a lie.
3 He knows how to answer a question and knows how not to answer
4 a question.

5 He could have told you the truth. He couldn't tell
6 you the truth. He decided to be evasive.

7 Let's look at some of his testimony. I doubt any of
8 you can soon forget, but there was a portion of a recording I
9 played for Mr. Simels, asked him some questions about it,
10 where Selwyn Vaughn -- and he are talking about David Clarke.
11 The question is neutralize Clarke, Selwyn says we need to buy
12 them or strike fear into them, it's the only option. Here he
13 says I agree with you, I agree with you -- defendants
14 stating.

15 When I asked him questions about this, when
16 Mr. Simels says: And you say I agree with you, I agree with
17 you, yes? Those aren't my words, page 1475 of the record.

18 You are agreeing with Selwyn Vaughn the only option
19 for Roger Khan is to neutralize Clarke through payment of
20 money to him or his family or by driving fear in himself or
21 his family, correct? Answer no. I was focused on a different
22 issue at the time.

23 "QUESTION: This guy is just spouting out about
24 crimes of witnesses, paying them off, hurting them or their
25 family and you're focused on something else, that's your

1 testimony?

2 "ANSWER: We were losing electricity at that
3 moment. I had flipped around, as you can see from the rest of
4 the sentence, to look at my computer and why it was all going
5 down that day. And then I was trying to reboot the system.
6 He did mention those kinds of things. I tried to dissuade him
7 of them."

8 Do you hear what he's telling you? He's saying this
9 but at that moment the computer crashed so I flipped around so
10 I didn't hear what he was talking about. He's referring to
11 the transcript when he's giving you that testimony. It's
12 T-10, page 23.

13 Only option, neutralize Clarke, drive fear, I agree
14 with you, I agree with you, I'm not sure if it's the outside,
15 the drain on the electricity. He's telling you he said those
16 things, but at that very moment the computer crashed so I
17 flipped, his words, I flipped around.

18 Let's play the recording. Play R-10, 1 hour,
19 2 minutes and 12 seconds.

20 (Audio played.)

21 MR. D'ALESSANDRO: Did you hear that? It's not in
22 the transcript, that long pause, that long, long pause; that
23 long pause between I agree with you, I agree with you, where
24 it's very clear he's talking directly to Selwyn Vaughn in
25 response to that very commentary. Then there's a long, long

Summation - D'Alessandro

1660

1 pause and he turns around, deals with his computer. He didn't
2 flip around, at that moment the computer crashed. He lied to
3 you, tried to deceive you, misdirect you. The evidence won't
4 let him do it.

5 Please continue the recording.

6 (Audio played.)

7 MR. D'ALESSANDRO: He heard exactly what
8 Selwyn Vaughn was talking about. He wasn't distracted. There
9 was no flip because the computer shut down and distracted him.
10 He was engaged. He had a discussion with him because he
11 understood what they were talking about, whatever it takes.
12 Call me, day or night on my cell number. How much money are
13 we talking about? Whatever it takes. Is that the kind of
14 questions that you would ask if you didn't hear the
15 conversation? No, he heard it. He wanted it to go forward.
16 He lied to you.

17 Let's look at another example. This is yes or no
18 questions I was trying to get out of Mr. Simels. Is it a
19 crime to pay a witness for his testimony? Yes or no? It's a
20 crime. Very simple. Yes or no. Let's see how long it took
21 Mr. Simels to answer the question.

22 You understand that offering to pay someone for
23 testimony is a crime, right? I wasn't going to offer anybody
24 to pay -- not responsive to my question meant yes or no
25 question. You understand that paying a witness money for

1 their testimony is a crime, correct? Paying for false
2 testimony, yes, that's a crime. Paying for any testimony is a
3 crime. Well, we always pay to have people appear. That's a
4 different issue. Let's be specific. Beyond the \$40 witness
5 fee, beyond that, beyond your understanding is beyond that,
6 paying for a person to testify is a crime, correct? I would
7 say yes. Not that hard. Not that hard to answer the
8 question.

9 5,000 or 10,000 or 20,000 for someone to testify --
10 not talking expert witnesses. That's a crime, right? If I
11 was offering somebody money, is that what you're asking? Not
12 responsive. What I'm asking you, if a person offers a witness
13 money, 5,000 or 10,000 or \$20,000 for their testimony, that is
14 a crime, yes or no his answer. I assume it would be. You
15 would assume it, or is it a crime? It's a crime.

16 Ask yourself, if this person is up there
17 meaningfully engaged in his obligation to tell you, the
18 members of the jury, the truth, the whole truth and nothing
19 but the truth, why not just answer the question? Yes or no?
20 Yes or no. Why play games? Why play games? Because he can't
21 admit that to you because it's central to the case.

22 He offered money to people, to these witnesses, to
23 testify. It's a crime. He doesn't want to tell you that.

24 Let's look at another example. If you recall during
25 Selwyn Vaughn's testimony, also in the tapes, on June 11th,

1 2008, the meeting begins where Robert Simels's walks in, you
2 hear him hand something, refer to something he's handing to
3 Selwyn Vaughn. He says I think you should read this,
4 something me and the other attorneys got. Selwyn Vaughn
5 testified what that was, 3500-SV-31, a memo written by Roger
6 Khan on January 18th, 2008 to Robert Simels and the other
7 attorney. It has to do with Rule 15 motions.

8 We showed this when Selwyn Vaughn was testifying.
9 He identified this is the document that was shown to him at
10 that time. Look at what it is. Fineman will testify to this.
11 Fineman will testify to that. Fineman will testify to this,
12 that and the other thing, but the problem was, as you heard
13 from Selwyn Vaughn, it's not true. Some of it is, like I
14 worked for Roger Khan, recruited for Roger Khan, but this
15 other stuff about I was there when they're talking about
16 murdering Roger Khan, David Clarke, and I was the high ranking
17 member of the PNC. Selwyn Vaughn told you he was like a
18 treasurer for the youth group, not a high ranking member.
19 This is instructions from Roger Khan, Selwyn Vaughn's boss,
20 you will testify to this. I don't care if it's true or
21 untrue, I'm instructing you, you will testify to this.

22 I asked Mr. Simels questions about this document on
23 page 1485. On the screen 3500-SV-31. This document, this is
24 the portion we've been talking about, right, the portion of
25 the document you handed to your client and I corrected myself,

1 handed to Selwyn Vaughn on June 11th, 2008 at the beginning of
2 the meeting, correct? Yes? Answer, actually I didn't hand
3 him this particular document on that date. But something
4 else. This. Similar to this, but something else. You were
5 here when Selwyn Vaughn identified this as the document,
6 correct? I heard him say that.

7 What is he saying? Oh, I didn't show him that. I
8 showed him something similar but not that. Look what happens
9 when Mr. Shargel asks some questions during redirect, page
10 1575.

11 Mr. Shargel, 3500-SV-31 in evidence on the screen,
12 particularly the page about Fineman. The same document I
13 asked Mr. Simels during cross-examination. Are you familiar,
14 sir, if not by exhibit number with the January 18th, you heard
15 about this on cross-examination, referring to my questions,
16 January 18th? I recall it, yes, sir.

17 When Selwyn Vaughn is in your office and you show
18 him this document, you ask him to read what's contained on
19 this page and I think a little on to the next page as to what
20 he would testify according to Khan, did he ever say to you on
21 any of those conversations that it was false, whole or in
22 part, ever say anything like that to you? Never.

23 So, when I asked him questions about it, oh, no, I
24 didn't show him that, I showed him something slightly
25 different, but when his attorney asks questions, yes, I showed

1 him this document, but he never told me it was false. That's
2 a lie. He got caught.

3 Is somebody telling you the truth? Is that somebody
4 you want to trust? Is that somebody who is trying to hide
5 something?

6 One more example. If you recall, there was
7 conversations about -- excuse me, a lot of evidence about
8 Vijay Jainairne, also known as Son. He's the guy who is
9 nervous about testifying, intercepted on the David Persaud
10 tapes, who you recall was a cooperator who was murdered in
11 Guyana. There's a drug ledger he created which connects Khan,
12 these conversations which connect Khan. Jainairne is on those
13 tapes, Vijay is on those tapes, it's a problem.

14 There's an e-mail, also conversation where
15 Robert Simels and Arienne Irving direct -- direct -- Selwyn
16 Vaughn to go see Vijay Jainairne. It's important that that
17 happens when it does, which is July 30th because on July 30th
18 Robert Simels also tells Vaughn he's got an attorney. The
19 attorney says he doesn't want to talk to me. Not giving me
20 permission to speak to his client. That's devastating. Why?
21 Because even the defense's own expert, Anthony RICO said that
22 when a witness says they don't want to talk to you, that's it.
23 If they have an attorney, the attorney says they don't want to
24 talk to you, that's it. You can't do an end run around them,
25 can't send somebody else to go talk to him. Devastating.

1 Let's see how he handles that. He just says I said
2 that to Selwyn Vaughn but I lied. I never spoke to the
3 attorney. What? Selwyn Vaughn is doing what you said. You
4 say jump, he says how high. You tell him to go to see Vijay
5 Jainairne, he will. Selwyn Vaughn doesn't care if the guy has
6 an attorney, two, four or six attorneys. He doesn't care
7 whether or not the attorney is giving permission or not.

8 I asked him why lie about something so silly? You
9 told him see Vijay Jainairne. You understand he's going to
10 see Vijay Jainairne, correct? That's my intent, yes. Intent
11 to send him to go see Vijay Jainairne? Yes, sir. You could
12 have just told him to go see Vijay Jainairne and he would have
13 gone to see him, correct. That's what I would have hoped,
14 yes, sir. Whether or not he's represented, his attorney says
15 you can or cannot meet him, it's completely immaterial, right?
16 That's true. But nevertheless, it was important for you to
17 lie to him about that? I didn't say it was important. I just
18 said I said it. Said it because you just lied? Because I was
19 just talking. My methodology, that's what I say.

20 Let's explore this a little bit if I can. Your
21 methodology is just to say things whether they're true or
22 untrue? With respect to him. You're talking with respect to
23 Vaughn, right? You weren't specific in your response. You
24 said your methodology. I was talking about Vaughn. You speak
25 only to Vaughn when you just lie? Not only Vaughn, but I

1 wasn't lying to him. I was giving him what information I
2 wanted him to have.

3 Do you hear this distinction? I'm not lying, I'm
4 giving him the information I want him to have. But it's
5 untrue. The information you want him to have is not true.
6 What does he answer? So? So, that's a lie. It's a lie; yes,
7 sir.

8 It's a lie. It's a lie. Can't admit to that?
9 Takes all this questioning to get him to say that? Is that
10 someone giving you the information so you can make informed
11 decisions or someone trying to hide things from you? I
12 respectfully submit Robert Simels's testimony, he decided to
13 and I want to get this right, give you the information that he
14 wanted you to have, not the truth, the information he wanted
15 you to have.

16 I suppose we shouldn't be all that surprised about
17 his decision to lie. He's on trial for obstructing justice on
18 behalf of his client. What's to stop him from getting on the
19 stand, trying to obstruct justice in his own case? He thinks
20 the rules don't apply to him. He's wrong.

21 I want to talk about now the efforts that
22 Robert Simels and Arienne Irving took to obstruct justice in
23 this case. There are eight people we're talking about. These
24 are the targets of the defendant's efforts to obstruct
25 justice. Selwyn Vaughn, David Clarke, George Allison, also

1 known as Chinaman; Vijay Jainairne, also known as Son,
2 Ryan Pemberton also known as Sancho, Leslyn Camacho, Alicia
3 Jagnarain, Farrah Singh. You know these names. That first
4 one up there may shock you, maybe why is Selwyn Vaughn there?
5 He's their weapon, their device, implement to obstruct
6 justice. How is he a target? How is he somebody they're
7 trying to obstruct justice with?

8 If you recall, time and time and time again,
9 Robert Simels says he wants you to testify. We wants you to
10 testify. When will you testify? They anticipate putting him
11 on the stand to testify.

12 Let's look at how Selwyn Vaughn, were he to tell the
13 truth, let's look at his testimony. Here are the problems he
14 poses.

15 He tells them he's an entrepreneur, right? Drug
16 dealer by any other name. He tells them that Roger Khan is
17 the boss, specific word, the boss. Ms. Irving confirms that
18 during the meeting on May 13th. He tells him his cousin
19 worked for Roger and was in jail because he killed people who
20 ripped him off on a drug deal. He tells them that within the
21 group, Roger is known as Shortman. He also tells him that he
22 has no direct knowledge about Buxton or Clarke from 2002
23 through 2004 because he didn't deal with Roger or Buxton until
24 2005.

25 I said it before. These four things, he's a witness

1 for the prosecution. State your name? Selwyn Vaughn. What
2 do you do? A drug dealer. Who is your boss? Roger Khan.
3 You got any family members that work for Roger? My cousin,
4 he's in jail because he killed people for a drug deal for
5 Roger that went bad. What's Roger's name? Our group, the
6 group you're charging?

7 Short Man can't have him testify to any of this at
8 all. Then their defense about David Clarke is, you know, he
9 hates America, conspired to kill Khan and their enemies,
10 doesn't make sense. Can you say that? No, I can't think of
11 that, I have no personal knowledge of this.

12 He's a horrible witness. So, let's see, what is
13 30 years of being a lawyer, what legal device, what crafty
14 move, what legal technique do you use to resolve these vexing
15 issues? Very simple, ladies and gentlemen. The solution, get
16 Vaughn to lie, flat out lie. Don't worry about it. Don't
17 worry about it. Say to the boss, let's go through each one of
18 these. Here's the solution for Vaughn's job, entrepreneur.
19 May 13th, he says, you know, you know, if you're gonna
20 testify, you have to say you have some sort of job, laborer or
21 anything, right? True, true.

22 You heard the tape. Did Selwyn Vaughn say he's a
23 laborer at any time? He said entrepreneur. We know what that
24 means. Laborer? Tell him, just outright lie.

25 He represents it. Yes, well, it seems to me your

1 position in this case, if you were being cross examined is
2 simply to say I had a job. I worked in Guyana. You have to
3 say that you are working up here, I mean that's the only
4 reason you could be here. He's coaching him to lie. You
5 can't get up there and say you're an entrepreneur, everybody
6 will know would that means. Make it up, pick up what you want
7 to say.

8 The solution to the boss and drugs, May 13th. Now,
9 I guess the big question really, and clearly we're not saying,
10 we'll never say Roger is involved in any kind of drug dealing.
11 He's going to be described to the jury as somebody who builds
12 homes, somebody who has a truck, bus, whatever you call it,
13 with homeless children, in the timber business. So, I know
14 earlier you said that that Roger, you described him as the
15 boss, but we certainly would not want to describe him as being
16 a drug dealer. Never get to that point. True. True, true.
17 Simels, we certainly don't want to describe him as the boss.

18 I know you said he's a boss and a drug dealer. When
19 you testify? That's lying, perjury. That's giving false
20 testimony.

21 The Shortman dilemma. Clearly, Selwyn Vaughn is
22 going to need a little more seasoning on this one. May 13th.
23 So you would refer to most people who are short as Shortman?
24 Not really. What would you refer to him? I mean, as I said,
25 in the group. The group, Roger Khan's organization in the

1 group. We say Shortman, we know who we're talking about.
2 Right. In the group. Vaughn, the group, right. But I'm
3 saying other people in Guyana are called Shortman. It's
4 possible. It's quite possible.

5 He's saying, look if I testify, they say do you know
6 who Shortman is, I'm going to say Roger Khan. He doesn't want
7 that to happen. That's bad. He says are other people called
8 Shortman, gives out names, this one, that one is called
9 Shortman, so when you testify, say all these other people are
10 Shortman. You cannot do that. That is getting people to lie.

11 This is the Clarke issue. First, 3500-SV-31, clear,
12 clear instructions, a script, an order from Roger Khan to
13 Fineman, one of his employees. You will testify the way we
14 need you to about David Clarke. That's one way they script
15 him to lie about that.

16 He tells him, referring to this document, there are
17 two things he wants to do. One obviously to the extent that
18 we can give you the location that we think Chinaman's at or
19 his family. Maybe even find out if he's here, if he'll talk
20 to us. Secondly, I mean he really wants you to testify to all
21 this shit. Not facts. Shit. This is crap. He knows it is.
22 He's instructing him, Roger Khan, your boss wants you to say
23 this on the stand.

24 He continues on June 20th. So how would you know in
25 other words, Roger is talking about the things that you could

1 say, you could say anything, right? That Clarke was providing
2 ammunition to them, that Clarke was helping them. I think
3 these are things he would like me to say. And this is the
4 questions I tried raising with you the last time I was here.
5 It's fine. I have no problem with that, but how do I come to
6 that under cross-examination which is what I was trying, you
7 know, to reach that, right? He's telling you, look, I'll say
8 whatever you want me to say, I'll listen to the boss. I have
9 no problem. They're going to ask me questions on
10 cross-examination. What do I say? How do I handle it? Look
11 at the suggestion.

12 Well, the point of the matter is none of the
13 prosecutors have ever been to Georgetown or to Guyana. He
14 gets distracted, has to leave the office for some time.
15 What's it? Say whatever you want. They're not going to know,
16 never been to Guyana. Is that a search for the truth? It's a
17 search for lies, make sure his testimony is conforming to the
18 defense.

19 June 13th, 2008 in evidence, 554. This is after
20 Arienne Irving met with Roger Khan. She comes back with very
21 clear instructions to Robert Simels and the file from Arienne
22 Irving, June 13th, 2008 meeting with Roger. Roger Khan said
23 he wants to wait until the judge rules on the 404(b) motion
24 before writing down what Fineman should testify to as we may
25 not need everything if the judge doesn't let it in. Very

1 clear. Let's wait, no point in writing it down again. Let's
2 wait before I tell him what he has to testify to.

3 Now, that's how Selwyn Vaughn was a target, but as I
4 said earlier, he was also their weapon. He was their device.
5 He was their implement by which they were going to get to
6 those seven other individuals as well as using the people in
7 Guyana to get them to say what they wanted him to say or not
8 say anything at all.

9 To do that, Vaughn is very specific. He's very
10 explicit. He's very clear. I'll do it, but I need some
11 money, right? I got a group, my only little network here,
12 people who are loyal to Khan, people in jail with Gerald
13 Pereria, we can do this. He's got people who like himself are
14 loyal to Khan, out of prison. He's going to use unregistered
15 phones, remember the unregistered phones, phones that law
16 enforcement can't track because you throw them away, no
17 subscriber to them? So, loyal to Khan, criminals and
18 unregistered phones.

19 For what purpose? Very clear. Find the witnesses.
20 Find their families. Find their friends and make them an
21 offer they can't refuse, lead or gold, buy them or strike fear
22 into them. The only option.

23 Let's listen to some of the discussions on this
24 point, 28 minutes, 8 seconds.

25 (Audio played.)

Summation - D'Alessandro

1673

1 MR. D'ALESSANDRO: June 11th, 2008.

2 (Audio played.)

3 MR. D'ALESSANDRO: Crystal clear. First, there's a
4 concern he has about harassing the witnesses, right? So,
5 Vaughn says I don't have to go to anybody. I don't have to do
6 anything if you don't want me to. Just tell me what you need.
7 He's very clear what he needs. He needs Clarke not to
8 testify, to away his deal or he needs him to say what they
9 want him to say. So, Vaughn says well, we could pay them, pay
10 the family to say what we want them to say.

11 What does Simels say? What are you talking about?
12 You can't pay witnesses to testify. Remember 18 questions
13 later he finally on cross-examination had to admit that's a
14 crime? He knows it's a crime. What are you talking about?
15 You can't do that. That's a crime.

16 No, I understand. I understand. I understand that
17 we can pay these family members. We need to find out what
18 they want. I need to know how much money they were willing to
19 take to testify the way they want to.

20 38 minutes, 50 seconds, same recording, June 11th,
21 2008. Still talking about Clarke.

22 (Audio played.)

23 MR. D'ALESSANDRO: Vaughn is talking about getting
24 at Clarke's mother. What does Simels do? Does his computer
25 break down again, he was distracted? He heard every word of

Summation - D'Alessandro

1674

1 it, we'll get into it. He changes the topic. He doesn't say
2 wait, don't touch anybody. What are you talking about?
3 Clarke's mother? Are you crazy? He doesn't say that. He
4 changes the topic.

5 You're going to learn, as you know, the next meeting
6 on June 20th specifically addresses this issue again about the
7 mother. He heard this. What are they talking about? He's
8 concerned that some people will go to approach them, will go
9 to the government. He's talking about look, we have to be
10 careful in how we do this. If we pick the wrong person, the
11 gig is going to be up.

12 R-10, 57 minutes and 15 seconds. It's the same
13 meeting, June 11th, later on.

14 (Audio played.)

15 MR. D'ALESSANDRO: He's talking about paying money
16 to Clarke's relatives who will then go to Clarke and explain
17 to him this is the deal. You got all this money. He says it.
18 Roger Khan -- there's money. He's got to do, I think that
19 whatever he's got to do financially, you've got to be able to
20 resolve these issues. There is money that is available. The
21 only issue that I have to know is just what. And they can't
22 let us know. The relatives are willing to be bought, friends
23 and family willing to be bought, how much meant for what
24 reason? For them to get Clarke for him to get suddenly
25 amnesia. What does he say, no, what are you talking about?

SS

OCR

CM

CRR

CSR

Summation - D'Alessandro

1675

1 Suddenly amnesia? What are you saying? It's a terrible thing
2 but if it happens, it happens.

3 (Continued on next page.)

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SS

OCR

CM

CRR

CSR

Summation - D'Alessandro

1676

1 MR. D'ALESSANDRO (Cont'd). It's been known to
2 happen. Unmistakable what they're talking about. Unmistakable
3 what the plan is. Unmistakable what the intent of these
4 conversations are for. That's June 11th. All of those are
5 June 11th. I didn't play it again; I played it earlier.

6 Also, on June 11th is the whole neutralized Clarke.
7 Either you buy them or strike fear in them. If there was any
8 confusion, that pretty much sets it out. That is the plan.
9 All on June 11th.

10 And then what happens at the next meeting June 20th?
11 June 11th, very clear plan: Buy them, strike fear into them,
12 give them amnesia, pay these people. I need money for my band
13 of criminals. So what happens on June 20th? We have R-13 40
14 minutes 18 seconds.

15 (Tape played); (Tape stopped)

16 It us unmistakable. Clarke's mother off limits.
17 Don't kill her. That's the only instruction he gives him.
18 Yvonne (ph) tells him I don't have to go anywhere -- he
19 doesn't want you anywhere near it. I don't have to go
20 anywhere near it. He's got these other guys. Selwyn Vaughn
21 explained to you about what that was about, too. He knows
22 these people, and they know him. They were neighbors. So if
23 Selwyn Vaughn goes there and starts doing it then everyone is
24 going to know that Khan is behind it. They are going to know,
25 so he's going to use these other people to do. There is no

Summation - D'Alessandro

1677

1 instruction not to do these things. The instruction is to be
2 careful so you don't get caught, and it is not don't do it
3 because it's a crime; don't do it because's going to get put
4 in the SHU. This is what needs to get done for. He wants as
5 much pressure to being put on him as possible, but he thinks
6 if Clarke's mother gets killed, that the government will go
7 crazy. The ceiling is Clarke's mother's death. Everything
8 else is fine. And this isn't dissuading violent acts. This
9 isn't dissuading persuasion from these people for money or
10 violence or intimidation, threatening. How do you know? Look
11 at Chinaman. Chinaman, George Allison, the brother of Donald
12 Allison who was murdered by Khan's crew. If he'd cooperated,
13 right, it going to be a bad thing. I don't think he cares
14 about Chinaman in terms of 'cause I don't think they'll put
15 the heat -- the heat on him that's screwing around with the
16 mother would. I mean doing something violent to her. This is
17 not, look, don't do anything bad, to witnesses because it's
18 going to be bad for us. This is Clarke's mother, don't kill
19 her, but Chinaman, do whatever you need to do, even something
20 is violent. He doesn't think the government is going to go
21 crazy, so we could probably get away with that.

22 He mentions Alicia, about putting pressure on her,
23 but you got to be careful because if you go to far, the
24 government is going find out, and things could get worse for
25 us. Not don't do it; just do it right.

Summation - D'Alessandro

1678

1 We will play a 55 minutes 55 seconds page 29 of the
2 transcript.

3 (Tape played); (Tape stopped)

4 MR. D'ALESSANDRO: Persuade them they shouldn't
5 testify. That's great. You can persuade them that they
6 shouldn't testify that's great. And how? He's already told
7 you how. Pay them, pay their family, or acts of violence.
8 Threaten them. Intimidate them. Just don't kill Clarke's
9 mother, but Chinaman, do whatever needs to be done.

10 Alicia. If we can persuade Alicia that she ought to
11 talk to me and she has it in the back of her mind that her,
12 her involvement is not a good thing, great.

13 If we can get it in the back of her mind that her
14 willingness to get on the stand at Roger Khan's trial and
15 testify against him, if we can get that in the back of her
16 mind, great. Chinaman, this poor guy, whatever the situation
17 is with him, whatever it takes.

18 Keep this in mind, June 11th, 2008 the mother is
19 mentioned, the money is mentioned for the criminals, and the
20 phones and striking fear into them all out there and mother
21 Clarke's and then June 20th gives him \$1,000 -- I don't think
22 I've ever held \$1,000 before -- a \$1,000 to do what needs to
23 get done. Pay for him criminals, to pay for his phones,
24 \$1,000, with instructions from Roger Klan wants. Clear
25 instructions: Don't kill the mother, Chinaman whatever,

Summation - D'Alessandro

1679

1 Alicia Leslyn Camacho. How did he get that information,
2 ladies and gentlemen?

3 Luis Rodriguez testified. He's an investigator at
4 the MCC where Roger Khan is housed. In evidence 705. This is
5 a list. Remember what he said. All of the cases are monitored
6 and recorded and they are logged. These are all the calls from
7 January '08 to September '08 made by Roger Khan.

8 Really, really, small, but there's no call made
9 between June 11, 2008 and June 20th. He also testified that
10 records are kept when there's an unmonitored call. It
11 wouldn't show up on this log. Right. He said he looked for
12 it and there's no record being that Roger Khan didn't make an
13 unmonitored call. So he didn't call him. So how? How did
14 Robert Simels know to pay Selwyn Vaughn \$1,000 and what he
15 could and couldn't do? How did he learn that? Arienne
16 Irving.

17 In evidence 703 is the visitor's log at MCC.
18 June 13th, 2008. The only visit between June 11th, 2008 and
19 June 20th, 2008 Arienne, Roger Khan, nine o'clock to 10:55.
20 What happened at that meeting? In evidence 564. This is Ms.
21 Irving's memo on the meeting with Roger Khan June 13th, 2008
22 fro, Arienne Irving to Robert Simels:

23 Roger Khan told Simels to use his discretion giving
24 money to Fineman for his investigation. He said start with
25 \$1,000 and see if you get some results and then Simels could

Summation - D'Alessandro

1680

1 decide if he wants to give more.

2 Khan said to make sure to tell Fineman not to do
3 anything stupid in terms of Clarke's mother and he would leave
4 it to Robert Simels to decide if someone should go speak to
5 her and he leaves it to Simels legal opinion about any
6 ramifications.

7 You know, you know that there's a lot more to this
8 conversation than what is in that memo. You know. And how
9 does he understand about money for Selwyn Vaughn and David
10 Clarke's mother. June 11, 2008 she's not there because Robert
11 Simels told her, hey, look this guy Selwyn Vaughn is willing
12 to do what we need him to do but he needs some money. And
13 he's talking about Clarke's mother. Go find out from Khan
14 what he wants to do. Here is a thought. What the hell are you
15 even involving Khan in this discussion. No, we are not doing
16 it. We are not touching Clarke's mother. Not paying this
17 maniac to go harm people. Go talk to Khan about it. Actually
18 discuss it with Khan. And here what Khan says. But you know
19 there's more. You know there's more than this. How? Because
20 Simels explained it. He says be careful. He says don't kill
21 the mother. He says with George Allison, if he's a cooperator
22 it's a bad thing, but he doesn't think that the government is
23 going to crazy if something violent happens to him or his
24 family. Alicia Janieri, well keep it in the back of her mind
25 her involvement is a bad thing. Where is he getting all this

Summation - D'Alessandro

1681

1 information? Because Robert Simels told Arienne Irving and
2 Arienne Irving went to Roger Khan. Discussed it with him and
3 then she reported back to her, her boss Robert Simels.

4 And there's more.

5 On June 17, 2008 Selwyn Vaughn called the office of
6 Robert Simels and gets Arienne Irving. She says right, right
7 because he sent you in relation to some of the people. I saw
8 -- I saw the e-mail he sent to you 'cause I had met with
9 Roger.

10 Line 35. Yeah I'm had met with Roger so he e-mailed
11 you after that.

12 And next line down 44: Yeah. What, what I can do
13 is -- is when he, um, gets back because he definitely wants to
14 meet up with up with him again. Talk about everything, and
15 give you some money because I know you need some money to get
16 started and everything.

17 She knows. She knows exactly what's going on. She's
18 talking to Roger Khan about it to make sure the plan goes
19 through. She knows the objectives. She's helping out. She's
20 taking part it in and she's doing things to make sure that the
21 objective is achieved.

22 Let's look at some of the other arguments in this
23 case. I just went through a bunch of recordings with regard to
24 David Clarke. Let's just summarize the problem that he faces.
25 He was the star witness against Khan in their minds.

Summation - D'Alessandro

1682

1 Robert Simels describe him in one meeting as "everything to
2 the government's case, that the government's whole case was
3 based upon him."

4 Simels describe Mr. Vaughn as the centerpiece of the
5 government's case. He explained that the government's whole
6 case would fall apart if Clarke is neutralized.

7 On the stand he was -- Mr. Simels was trying to
8 explain, no, I really didn't think he was that important. He
9 has to say that. He's got to distract you and think, why
10 would he do all these things if this person wasn't important.
11 He was important. He was everything to the government's case
12 in his mind.

13 What's the solution? You know it already. You've
14 heard the tapes. You've heard the testimony. Selwyn Vaughn
15 to get to Clarke. Selwyn Vaughn to get to Clarke's family and
16 friends, buy them or we got to drive fear in them. It's the
17 only option. Pay them off. Strike fear into them.

18 George Allison. You just heard the recording with
19 regard to him. What is the problem he faces, he poses to them?
20 There's a concern. They don't know for sure but there's a
21 concern he's a cooperator. Just said it on the tape. Another
22 cooperator. Bad thing. More witnesses against Khan. Bad.
23 What's the solution >you heard it. Send Vaughn to get to
24 Allison and his family. I don't think he cares about Chinaman,
25 George Allison, in terms of because I don't think they will

Summation - D'Alessandro

1683

1 put the heat on them that screwing around with the mother
2 would. I mean doing something violent to her.

3 Whatever it takes. Whatever it takes. This guy is
4 cooperating. Get rid of him.

5 Alicia Jagnarain. Alicia Jagnarain, you will recall,
6 had a relationship with David Persaud. David Persaud was the
7 guy that was murdered while he was cooperating with the
8 government in Guyana. Simels describes her as a very
9 significant witness and he explains why. Because she can
10 introduce the David Persaud drug ledgers against Roger Khan.
11 There's books that the government had which are an accounting
12 of Roger Khan's drug business or drug transactions in which
13 Roger Khan is mentioned. That is devastating evidence. She
14 could authenticate, she could get them into a trial, she could
15 let a jury look at them to corroborate testimony. She could
16 also authenticate David Persaud said tape-recordings. Remember
17 when he was in -- while he was cooperating he was also -- it
18 is discussed on the tapes he was also making recordings and
19 people are spoken about, and you know, Mr. Simels on his
20 cross-examination was trying to downplay. They are not that
21 important. They're very important, and he knows it, and he
22 told you.

23 June 20th, 2008 meeting. Simels says: Plus I am
24 sure he's even more nervous now that I have played him some of
25 the tapes he made with David when David was cooperating with

Summation - D'Alessandro

1684

1 the feds. He was talking about the Barry Dataram. Barry
2 Dataram managed Khan's drugs to Europe, to the United States,
3 also known as Kevin Mogatoni. Persaud made some tapes. He
4 threw out Kevin. Threw out everybody's name on the phone.

5 Vaughn: Shit. That's while, that's while, that's
6 while he was living up here or after he was sent to Guyana.

7 Who is that?

8 Kevin: He used to live up here.

9 Page eight. Still talking about the case.

10 Kevin certainly throws Roger's name all over the
11 place in the telephone. Roger's name. Not saying the name
12 Roger. Roger's name.

13 Kevin talks about Roger on the tapes. They are
14 critical evidence. They are bad evidence. We need to get
15 this evidence out of the Khan case.

16 Vaughn: Yeah, well, I don't know how Kevin would
17 lapse like that, you know. Actually, say Roger Khan's name
18 over the phone. I mean, yeah, he would have been the point
19 man. You know. He would be the guy having a conversation
20 about drugs, Roger Khan, he would be the guy who would say
21 Roger's name. He was managing the shipments to the U.S. and
22 to Europe. He would have been the point-man, you know, but you
23 would expect, him, you know, to be much, much, more, you know,
24 careful.

25 And they talk about Kevin.

Summation - D'Alessandro

1685

1 Vaughn: Why, why, why, would Mogatoni be calling
2 people's names over the phone? Mogatoni, Kevin, Barry
3 Dataram. Why? Why 'cause he's being stupid. That's why. He
4 was being stupid to say Roger's name on the phone.

5 Now, he is going to wonder now, you know, what
6 decisions Roger may want to make so, if it's not Roger's name
7 on the phone what does Roger care? He's got to be concerned
8 because he said Roger's name over the phone.

9 Simels: Which is problematic.

10 So he is trying now to get within your good graces.

11 Simels: Maybe he needs to really think about it.

12 No Alicia, no tapes. No Alicia, no drug ledger.

13 And it wasn't just Selwyn Vaughn. People in Guyana
14 that they tried to use too.

15 Here is in evidence 810. This is a letter which is
16 recovered from one of the computers. Been scanned in. May
17 13, 2007 my brother Paul. Respectfully submit, it is Paul
18 Rodriguez.

19 I also, respectfully submit, this is a letter
20 written by Roger Khan to Paul. Look what it says on page
21 five: Please call dancing man and tell him to make sure he
22 pays the money on time every month. I am happy to hear he
23 spoke to her parents. Talking about Alicia Jagnarain, and that
24 they are making excuses for her, and asking if he can't have
25 them call her to talk to my lawyers, and we can try to work

Summation - D'Alessandro

1686

1 out something. Ask him to stay in close contact with them and
2 to keep bugging them. Why can't you just come back home and
3 avoid lying on the stand.

4 So it is clear that her parents are still there.
5 Find out who is close to her dad. See if you can find out who
6 is his best friend. Go to see Mr. Mohammed from Mohammed
7 Enterprise on Lombard (ph) or Jetsen. They will definitely
8 know him or ask Brian Loft (ph) to find out who he deals most
9 of his business with.

10 Paul, please pursue this issue. It can really help.
11 You have to get someone to look him straight in the eye and
12 tell him that no, underline. No one will accept her attempts
13 to testify against me. Let them -- might as well just sell --
14 excuse me -- sell everything and leave now.

15 Paul, you know, if any one of you were here I would
16 have guaranteed she can't testify, so I can't understand.
17 Offer her parents a big amount of money to speak -- to
18 persuade them. You never know, Paul. This is all worth a
19 try. Ask dancing man to make the approach.

20 From March 2007 they recognized she was a problem.
21 From March 2007 they were making efforts to shut her up. From
22 March 2007 members of the Phantom Squad had her in their
23 target sight, her parents to get to her.

24 Vijai, also known as Son, he is on the David Persuad
25 tape recordings. They are afraid he is going to testify

Summation - D'Alessandro

1687

1 against Roger Khan. So what do they do? Send Vaughn to get to
2 Vijai. Send Roger's gang in Guyana to get to Vijai's brother.

3 I referred to this earlier in my discussion with
4 you. Here's the e-mail I talked about. July 30th, 2008 from
5 Arienne Irving to Fineman cc Robert Simels. This is right
6 after the July 30th meeting.

7 Robert meant to tell you this but he also wants you
8 to try and talk to Vijai, aka Son. He is also living down in
9 near DC, and she gives a home address for this guy. A witness
10 against Roger on several wiretap conversations with Dave
11 Persaud. Send him to go get Vijai Jainari. Remember Vijai
12 Jainari said I have an attorney and my attorney did not give
13 me permission to talk to anyone.

14 Can we have R 26 32 minutes 47 seconds. This is a
15 conversation which they are specifically speaking about Vijai
16 Jainari. They start with the transcripts on page 14.
17 Thirty-two minutes 47 seconds, please.

18 (Tape played); (Tape stopped).

19 MR. D'ALESSANDRO: That is exactly what I'm talking
20 about. Go kidnap the brother.

21 And I tell them what's the big fucking deal. Kidnap
22 him. Guyana. You guys are used to it.

23 But they're afraid. They are afraid of being
24 arrested.

25 Mr. Simels response: Big fucking deal. They'll ask

Summation - D'Alessandro

1688

1 you a few questions, you'll get released.

2 He knows what these men are capable of. He is using
3 it to his advantage to find Son's brother, kidnap and for
4 what?

5 THE COURT: When you get to a logical breaking point,
6 we will take a break.

7 MR. D'ALESSANDRO: I'm almost finished with this
8 point.

9 THE COURT: Okay.

10 MR. D'ALESSANDRO: He wants to introduce the
11 brother. Get to the brother to get his brother, Son, to back
12 off, to back off. Get to the brother to get Son to stop
13 cooperating.

14 (Continued on next page)

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1 MR. D'ALESSANDRO: (Continuing) if you remember
2 during Mr. Simels's testimony, he was telling you that oh, we
3 knew that Son's brother was a judge. So we wanted to present
4 our evidence to him to keep his brother from testifying
5 falsely.

6 Really? On page 15, line ten. Who is his brother?
7 Let's get to his brother.

8 They don't know who his brother is. They don't know
9 his name. They don't know he's a judge. It's a lie. They
10 know he's got a brother. That's all they need to know.
11 Pressure point. Pressure point, press it.

12 He then instructs Arienne Irving to send a
13 transcript with Son's name so that Sean Belfield, Regan, can
14 find the brother, guys in Guyana, find the brother to get the
15 brother to back off.

16 Tell him to call me first. I'll tell him what I
17 want done.

18 Then he explains exactly what he wants done
19 afterwards. Kidnap the brother. Get him to back off.

20 On page 20 of the transcript, later on, right
21 outside the office, the recorder picks it up. They are not
22 talking to Selwyn. Ms. Irving asks, transcript of the actual
23 recordings? Get clear, what exactly do you want me to send
24 the guys in Guyana. Transcripts. We just want them to see
25 the name of this guy. The name of Son, right. And let them

1 grab up Kevin and Anand.

2 Okay.

3 And the brother.

4 Okay.

5 Ms. Irving knows exactly why she is doing this, to
6 grab up the brother. To get the brother to get Son to back
7 off. That's July 30th.

8 What happens right afterwards? Here is the Fed Ex
9 record, July 31st, Arienne Irving sends something to Paul
10 Rodrigues, 29 Dadanawa Street, Section K. Paul Rodrigues,
11 this is the directory again, 803. Paul Rodrigues, the same
12 address.

13 What does she send? 502 in evidence, page five.
14 This is the section for AI, Arienne Irving, things to do.

15 Page five, send Paul Persaud tapes and transcripts.

16 Now, it's Dave Persaud. Send Paul Rodrigues Persaud
17 tapes and transcripts. That's to get to Son's brother.

18 Done, August 1, 200.

19 Your Honor, I have more on this point. I don't know
20 if you want me to conclude it or take a break.

21 THE COURT: How much longer do you have on this
22 point?

23 MR. D'ALESSANDRO: Another five minutes.

24 THE COURT: Let's take a short break.

25 Don't discuss the case, ladies and gentlemen.

Summation - D'Alessandro

1691

1 All rise.

2 (The following occurred in the absence of the jury.)

3 THE COURT: All right.

4 (Recess taken.)

5 (After recess.)

6 (The following occurred in the absence of the jury.)

7 THE COURT: All right. Bring in the jury, please.

8 These benches inside the swinging doors can be used
9 for seating.

10 How much longer do you have?

11 MR. D'ALESSANDRO: I am going to try and not play as
12 many recordings to tighten it up. I think I'll be done on the
13 outside of 45 minutes.

14 (Jury present.)

15 THE COURT: Please be seated, everyone.

16 Okay, Mr. D'Alessandro.

17 MR. D'ALESSANDRO: Thank you, Your Honor.

18 Ladies and gentlemen, we were talking about the
19 defendant's efforts to tamper with Vijay Jainairne and what we
20 were focusing on before the break were there efforts to use
21 Selwyn Vaughn to do that. It's an instant message. It is in
22 evidence. It's eight hundred, the instant message that was
23 recovered from the computers in the office, between Robert
24 Simels and Willems Greenhart.

25 We know who Willems Greenhart is, Government Exhibit

Summation - D'Alessandro

1692

1 803, Regan Mark, Regan, one of the people he directed Arienne
2 Irving to send the transcript of Son so they could go grab the
3 brother.

4 Good morning.

5 Good morning to you.

6 Okay. I can get you on to Son's brother.

7 Simels, how did you make out finding Son's brother
8 or your other missions?

9 Regan, what to do.

10 Simels, good. He needs to help us with his brother.
11 His brother is likely to testify that he was introduced to
12 Roger by K, which I submit is Kevin, Dataram.

13 Your Honor, we lost the feed.

14 THE COURT: My fault.

15 There you go.

16 MR. D'ALESSANDRO: Thank you.

17 And then negotiated a deal that didn't go through.

18 But he will be a significant witness. Negotiated a
19 deal for drugs that didn't go through with Roger.

20 Right?

21 Simels, we need Son if he testifies to say that the
22 person he met in GT -- Georgetown -- is not the person sitting
23 in court. Frankly, I think if we can get a picture of Imran
24 Khan, who looks just like Roger, we can use that effectively
25 at the trial.

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1 The next page, Simels, he could say the person he
2 met has the name Raji not Roger.

3 Okay.

4 But we are getting a little more what exactly they
5 want him to say. Son may have done a deal with Barry Dataram.
6 Mentions Roger's name on the phone, Shortman. Did a deal.
7 Can't have many testify to that. Get him to back off. Have
8 him say this, say it wasn't Roger. It was Raji. And it's not
9 Roger Khan. It's Imran Khan.

10 Then later on in the same conversation, page three,
11 Regan, I just spoke to K. Kevin.

12 Good.

13 He said --

14 Hold for me, please.

15 Okay.

16 He said that what we are trying to do won't work.
17 That the guy already made up his mind. But what you want us
18 to do, change this guy, persuade him not to testify, won't
19 work. He's already made up his mind. He is going to say what
20 he is going to say.

21 That the guy already made up his mind. But what we
22 can do is --

23 Simels, maybe so. But there must be pressure we can
24 bring.

25 Yes, there is.

1 We can.

2 And then later down, no problem. You need to
3 persuade that he won't lose his deal. Just say Dave told me
4 this and Kevin told me this. But the fellow I met and the
5 judge is not going to not honor the deal since he met his
6 obligation to testify truthfully.

7 Okay.

8 He is going -- tell him to say this and that. Judge
9 isn't going to know any better.

10 In August there is another conversation between
11 Vaughn and Simels. This is T-30, page six.

12 Simels, you haven't heard anything from anybody
13 about -- about a way to get to this guy?

14 Vaughn, as I said, right.

15 Son I'm talking about.

16 He's talking about whether Vaughn spoke to anybody
17 in Guyana about Son's brother.

18 Yes. What I'm saying, what I'm saying, right, I
19 haven't heard anything in relation from them down there as to
20 what they intend to do with, you know, to the brother. If
21 they can come up with anything, then I think, you know, then I
22 just probably got to use, you know, our methods in dealing
23 with him up here.

24 Right.

25 So if they can't get to the brother, we are going to

Summation - D'Alessandro

1695

1 use our tried true methods as members of Roger's Phantom Squad
2 to get to Vijay, to persuade Vijay.

3 Because something ought to be done. If they can't
4 do it, then I got to do whatever I can do from here.

5 Simels, I hear you. Well, I -- I stand at the ready
6 waiting for you to call and let me know what -- what.

7 All right?

8 Later on page seven.

9 You know what I think, I'm going to just bypass
10 them, you know. Bypass the people in Guyana. They got some
11 other -- some other people, you know, who have been
12 around -- around us you know down there. I think it's
13 probably time, you know, that I probably make use of some of
14 them.

15 More people in Guyana that they can use.

16 Simels, what does he say? Okay. Because, you know,
17 because people like, like Paul and Belfield and them, they are
18 not really helping. It's considered -- it's a waste of a lot
19 of time, you know, even bothering with them.

20 I don't disagree with you. I don't disagree with
21 you.

22 You got some of the other guys, you know, who been
23 around, been around from the inception. Been around Roger
24 since the time that the organization was formed. And, you
25 know, I think we should probably start making use of some of

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1 them.

2 Simels, yep, yep, I agree with you.

3 Vaughn, what I probably just call them up and let
4 them know that we will, you know, is it an instruction that's
5 coming from him? I'm going to let these guys know that Roger
6 Khan wants this done. It's an instruction from him.

7 And that -- and that something is for me -- it's
8 what he wants to have done.

9 Simels, right. That's fine. That's fine with me.

10 Vaughn, yes. I think that that should be the best
11 approach. Because me just calling and asking them nicely and
12 politely, you know, they might feel, oh, he's just -- you
13 know, he wants people to go around in places but let them know
14 that it's coming from him and let them get busy.

15 Right.

16 What's going on here? Selwyn Vaughn is saying we
17 have other people in Guyana. I can call them in. Second
18 string, for lack of a better description. And I'm going to
19 tell them this is what Roger Khan wants. If I tell them this
20 is an instruction coming from Roger Khan, they are going to do
21 it.

22 Simels says, it's fine with me. Simels is calling
23 the shots for this group in Guyana. Simels is saying, it's
24 okay. Use your methods to get Son off the stand. Do not let
25 him testify.

1 Ryan Pemberton, what was the threat that he posed?
2 The problem with him, Simels was told that he is trying to cut
3 a deal with the DEA. They are afraid he is going to be on the
4 witness stand in New York and what's not mentioned on the
5 tapes but he is believed to implicate Roger in the murder of
6 Dave Persaud.

7 Let's go through this one at a time, first the
8 information that he is cutting a deal with the DEA.

9 June 20, 2008, page four.

10 Simels, because everyone that I spoke to tells me
11 that the wife moved out of the house. She told everybody that
12 he is talking to the DEA on the phone, trying to get them to
13 cut a deal with him and move him out of Guyana. Hiding in his
14 father's house on the second floor, you know, with the garage.

15 He's telling Vaughn, this guy Ryan Pemberton is
16 trying to cut a deal with the DEA, the Drug Enforcement
17 Administration, to have them bring him out of Guyana, bring
18 him to the United States, to testify.

19 And that he is hiding in his father's house. He's
20 hiding, the guy is hiding, hiding up there. We went by. Paul
21 hit the horn a few times trying to ask him to come out and
22 talk to us. He won't come out.

23 Vaughn, he's afraid. Big surprise. Words out that
24 he is going to be a witness against Roger Khan, cutting a deal
25 with the DEA. Beep, beep, Paul Rodrigues. Hey, Ryan, come

1 outside. No way.

2 This guy is terrified. Do you think he's going to
3 talk? Vaughn knows it. He's afraid. And look what has been
4 going on to this guy, the stroke of bad luck. Not only is his
5 wife telling everybody he is trying to cut deal with the DEA,
6 he got shot.

7 You know he got shot recently, right?

8 Yeah, so like he might be scared, you know.

9 He thinks Mankind set him up.

10 No doubt, that he's afraid he is going to be on the
11 witness stand.

12 The same meeting, June 20th.

13 Page 25, he's relating a conversation he had with
14 Paul Rodrigues and Gerald Pereria when he's in Guyana.

15 Robert Simels, because I said to them -- Paul
16 Rodrigues, Gerald Pereria -- do you think you could tell Roger
17 to his face what you're telling me? That you can't find this
18 guy, that you can't bring him to me? If he told to you bring
19 somebody to him, you bring him.

20 Vaughn, exactly.

21 And they know how to bring people.

22 Right.

23 I said, you know Ryan's a problem now. Leave him to
24 us. I said, leave him to you, he may be on the witness stand
25 in New York.

Summation - D'Alessandro

1699

1 Well, fine. All right. Paul is the right person,
2 you know, you're actually talking to in relation to Ryan.
3 Because he would be the person who would have to coordinate,
4 you know, what I mean, anything down there, for him,
5 all right, but then you'll have to poke him.

6 If I leave him to you, Paul and Jerry, you haven't
7 been doing what I am telling you. If you don't do this, this
8 guy is going to be on the stand in New York. And he's going
9 to testify against Roger Khan. That's the team. That's what
10 they are focused on.

11 Vaughn tells him, yeah, Paul is the right guy. You
12 want to get to somebody, yeah, Paul is your guy.

13 But you may have to poke him. He is the guy that
14 can coordinate that.

15 What else did this man pose? 803 in evidence. Ryan
16 Pemberton is in there, a Guyana, South America contact. Ryan
17 Pemberton. Look what is written in there. May be rat who
18 told about David Persaud murder.

19 May be rat who told about David Persaud
20 murder -- .think about the words which are chosen to write
21 that. Not -- not that he's giving information about who told,
22 told the truth. He's the guy that pointed the finger at Roger
23 and the group for the murder of Dave Persaud. Devastating
24 witness. Cannot let him be on the stand in New York, Paul.
25 Cannot let him be on the stand in New York, Jerry. If I leave

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Summation - D'Alessandro

1700

1 him to you, he will.

2 The efforts continue. July 30, 2008. This is
3 their -- this is what their solution is, get Paul to get him
4 to change his story.

5 July 30, 2008, meeting between Selwyn Vaughn and
6 Robert Simels.

7 I know what you're saying. I know what you're
8 saying. You just can't get any help down there at all. They
9 just are -- have turned into weak guys.

10 These are the guys that he doesn't know are involved
11 in violence or kidnapping because they wear nice pants and
12 they say please and thank you. They turned into weak guys.

13 Now Ryan went to see -- Ryan went to see Paul,
14 according to Paul. Ryan Pemberton, Ryan went to see him.

15 Simels, yeah and says all the rumors were untrue and
16 et cetera, et cetera. I said to Paul, good. If that's the
17 situation, then he should be willing to fill out an affidavit
18 from me. Get ahold of him. Let me know. I'll prepare the
19 affidavit. You take him to Vic's office and have him sign it
20 in front of Vic. I can't, I can't get him to respond to me
21 again. I mean, he responds, but he doesn't respond to what
22 I'm asking.

23 Vaughn, amazing that they allow him to go.

24 Roger?

25 No. I mean, I mean Paul.

GR

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Summation - D'Alessandro

1701

1 If he cares, if he cares he's not getting any help
2 and I don't know, you would think if Paul went, people would
3 know why he's there.

4 Amazing. Amazing Paul is letting Ryan run around
5 town like that.

6 What does Simels say? You would think if Paul shows
7 up they would know why he was there. That's why Ryan didn't
8 come out of his father's basement or attic or wherever he was
9 hiding when he saw Paul. The guy is a killer. He's an
10 assassin.

11 I can't get these guys -- he comes -- and Ryan comes
12 and says look, it's all untrue. What do you expect this guy
13 to do? He just got shot. He knows Paul Rodriguez is looking
14 for him because his wife is going around town telling
15 everybody he is going to testify.

16 Get him to sign the affidavit. Here it is. Look at
17 this thing. 541, Ryan Pemberton, I am making this affidavit,
18 attesting to the truth of the facts contained in this
19 document, I have requested that this affidavit be signed
20 before any attorney who I trust for accuracy.

21 There is no evidence that Robert Simels spoke to
22 Ryan Pemberton before he wrote this. Just wrote it.

23 I know the individual Shaheed Roger Khan. When I
24 have been in his presence, it has only been in social
25 gatherings. I do not know if he knows my name.

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Summation - D'Alessandro

1702

1 I have never known of any illegal acts committed by
2 Mr. Khan.

3 I have no knowledge that Mr. Khan engaged in or
4 directed or in any fashion requested any individual to commit
5 any illegal activity.

6 I have no knowledge that Mr. Khan or anyone who I
7 believe may be friendly with Mr. Khan ever committed any
8 crimes of violence.

9 I have no knowledge that Mr. Khan or anyone who I
10 believe is associated with Mr. Khan has ever been involved in
11 selling drugs.

12 I have over the course of many years made up stories
13 about a number of people, including myself, claiming to have
14 been involved in some illegal activities. The reason I did so
15 was to make myself appear to be more important. These stories
16 were false.

17 This is false. The activities of these defendants
18 to get Ryan Pemberton to not testify --

19 MR. SOLANO: Objection.

20 THE COURT: Overruled.

21 MR. D'ALESSANDRO: -- is the problem. That's the
22 crime.

23 Farrah Singh, what problem did she pose? She didn't
24 but Alicia Jagnarain did. Remember, drug ledgers, drug tapes.
25 She is close to Alicia, the girlfriend.

GR

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CSR

Summation - D'Alessandro

1703

1 Mr. Simels describes her as being involved in a
2 three-way between Alicia Jagnarain and Dave Persaud and her.
3 Get to her. Get to Alicia.

4 How do they deal with Alicia? Send Vaughn to get
5 her to testify against Alicia. What do they do?

6 They give Vaughn photographs of this woman so he
7 could find her. Ms. Irving gives those. Gives them the
8 address, where she can be found.

9 For what purpose? What purpose?

10 T-28, transcript of the August 5, 2008, telephone
11 conversation.

12 On page one, you know the other girl, Farrah -- they
13 are talking about Farrah. Vaughn complains she is working in
14 a Brazilian strip club on Liberty Avenue. It's Liberty and
15 140th Street. 149th.

16 Start talking about this woman.

17 Vaughn says on line 26, apparently, you
18 know --

19 Simels says on 24, so she works at the Brazilian
20 strip club?

21 Vaughn, apparently, you know, it's a strip club that
22 they -- they got, you know, the usual nonsense.

23 Yeah. Okay. Well then she should be interested in
24 whatever it takes to say what we need her to say.

25 True.

1 And do.

2 What is he saying? She is a stripper. Pay her
3 whatever we need to to get her to say what we want her to say.
4 She is just a stripper. She is easy to corrupt. She is easy
5 to influence. We will just dangle some money in front of her.
6 She will say what we need her to say and do.

7 The last is Leslyn Camacho. What problem did she
8 pose? Directly, it was -- David Clarke was the problem. How
9 do you get to David Clarke? We've already talked a lot about
10 that. Friends, family, mother, pay them, violence.

11 She is close to David Clarke, right? She is David
12 Clarke's girlfriend. So how do you deal with her? Send
13 Vaughn to get her to testify against David Clarke. How? Pay
14 her \$10,000 for her testimony.

15 I want you to think about why they became part of
16 the investigation. June 20, 2008, Robert Simels hands a
17 thousand dollars to Selwyn Vaughn. The discussion up to that
18 point is for Selwyn Vaughn as their device, their weapon, in
19 their efforts to obstruct justice, to get at witnesses, with a
20 ceiling of don't kill David Clarke's mother. Do anything else
21 you need to do. Acts of violence against him, his family, his
22 friends. Alicia is mentioned. George Allison, whatever it
23 takes with regards to her. You can do violence against him.

24 Doing an investigation. Leslyn Camacho. Let's
25 redirect this. Say Leslie Camacho is willing to take money.

Summation - D'Alessandro

1705

1 David Clarke is willing to take money.

2 That's where this bribery, that's where the Leslie
3 Camacho and money. Because left to his own devices, there
4 would be violence all over the place.

5 So we got control of it. We redirected it.

6 Can we play R-18, 46 minutes, 54 seconds?

7 46 minutes, 54 seconds. This is R-18. On the
8 screen is T-18, page 13.

9 (Tape plays and stops.)

10 (Continued on next page.)

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1 MR. D'ALESSANDRO: (Continuing.)

2 They're talking about paying these people to testify
3 in conformity with what they want him to say. Leslyn, 5,000,
4 or 10,000, 20,000, whatever it's going to take. Khan has the
5 money. There's money that is available. He's willing to do
6 whatever he has to financially to resolve these issues.

7 Then David Clarke, comes up with David Clarke, he's
8 going to want some money. Think about what he offers. This
9 complicated real estate transaction to hide it, to hide it.
10 Not pay \$10,000 in an office with a tape recorder, whatever
11 that was about, but to disguise the payment so there's no
12 trail because nobody can say what the amount of the property,
13 the cost of real estate is worth.

14 Listen to his voice, he has intention of this going
15 through, discussing with Selwyn Vaughn what he thinks is going
16 to work, what's not going to work, how to get money to these
17 people's hands in order to get them to say what they need him
18 to say.

19 This is what he walks out with, Selwyn Vaughn after
20 the meeting on July 18th. This draft for Leslyn Camacho.
21 That's worth \$5,000. Ladies and gentlemen, 5,000, 5,000 after
22 she testifies, down payment, sign that so I know you're going
23 to testify the way you want. If you change your minds, start
24 to say something different, I can confront you with this
25 affidavit. Took three drafts in the recording, hear him throw

1 it away, Selwyn makes suggestions, not because he's
2 interviewed Leslyn Camacho. This is what he wants her to say,
3 if she wants the money, she's got to say this or she's not
4 getting any money.

5 Use pornographic video and drugs, alcohol to seduce
6 young military officers. Got to say that. Those stories,
7 June 20th, 2008. What does Simels say about that? Well, I
8 mean, I heard so many stories, Clarke stories, you don't know
9 because people are trying to help Roger, whether they're true
10 or not true. Frankly, I actually don't care.

11 I don't care if it's the truth or not. \$5,000, take
12 it or leave it. Sign this. I don't want to hear. I want
13 this, \$5,000. That's the deal.

14 Simels didn't act alone on this. That was
15 July 18th, 2008, the discussions about getting to David Clarke
16 and Leslyn Camacho through the payment of money. July 18th he
17 walks away with that draft affidavit, that draft statement for
18 her to sign if she wants the money.

19 Then we played a call for you from the MCC, one of
20 the calls that was recorded, July 18th, 2008, the second page.
21 Simels talks about this very meeting. Yeah, I met with the
22 slender guy a little while ago, the one from down below.
23 Doesn't say Selwyn Vaughn, the slender guy from down below,
24 Guyana, that's who he met with. He knows this is a recorded
25 conversation. We had some very interesting discussions and

1 we're taking some actions hopefully to better our positions.

2 What are those interesting discussions? How to pay
3 a witness, how to hide the transaction, pay this guy off to
4 say what we need him to say.

5 We're taking some actions hopefully to better our
6 position. Good, good. I was going to send Arienne down to
7 see you either Monday or Tuesday to tell him about this deal.

8 704, this is July 18th, there's a meeting on
9 July 18th between Roger Khan and Darmuid White, referenced in
10 that call.

11 The next meeting that Roger has with any attorney,
12 July 24th, 2008 with Arienne Irving.

13 What do you think they talked about? Talked about
14 this new deal, this new plan to get Leslyn Camacho what they
15 need her to say, put Clarke in a bad light.

16 On screen, T-26, more conversations about
17 Leslyn Camacho. Well, she should understand that she's
18 important to us. Nobody wants to set her up. Everybody wants
19 to just have her, you know, work with us. I don't know how to
20 assure her. Would she be more assured if I came to her versus
21 her coming to me? I don't know. I don't know, quite
22 honestly. I've been trying my best at it, you know, at the
23 same time I'm trying to, you know, not be too intimidating or
24 anything, you know, scare her off. Well, if she understands
25 part of the deal is the affidavit, that's this, 304, and part

Summation - D'Alessandro

1709

1 of the deal is the coming to court, then she has to meet me at
2 some point. Vaughn says she doesn't have, a basically, let me
3 put it this way. Let me tell you how well she's got it. She
4 don't care what we wanted her to say, basically, you know.
5 She just needs to make some money. She doesn't care. She's
6 got no problem with signing the affidavit or anything. Simels
7 says right. Vaughn right. Simels, okay. Vaughn, what I
8 think that maybe she's hoping for is to allow her to probably
9 get past that stage and then we'll see how things go, you
10 know. Because she will have to meet you if she want to sign
11 the affidavit. You see because -- well, you can read that.
12 Right, and she and certainly -- now, the issue becomes, you
13 know, I need to be able to prepare it. If I go to meet her
14 wherever she wants, I don't have a computer and I don't have a
15 printer and I don't have, you know, anything to basically make
16 changes that she might say ought to go into that document.

17 What does Vaughn say? She doesn't care what we want
18 to put in there. She doesn't care. She just wants the money.
19 Vaughn, she doesn't care whose name we want to put inside or
20 whatever. Just that she would very likely maybe have to get a
21 copy of the affidavit. Why? So that she remembers this
22 information later down. Okay. But she doesn't care what we
23 want her to say.

24 If it's the truth, why do you need a copy of the
25 affidavit to remind you? It's because it's not going to be

1 the truth. She's got no idea about any of this. She will say
2 whatever you want. But I need a copy so I can remember.
3 Because it's not true.

4 There's later conversations over the phone where he
5 talks about look, she just needs money and Mr. Simels uses two
6 examples to describe it. Look, it's like a blind date or a
7 beautiful house. You're going to tell me it's a beautiful
8 house, I need to see it before I pay. I want to make sure
9 she's going to say what I want before I give her money. To
10 use a more graphic example, ladies and gentlemen, but it's the
11 same principle.

12 Arienne Irving helps, too, more so than talking to
13 Khan about it, that one time, in evidence, 538. The meeting
14 between Arienne Irving and Roger Khan at the MCC on
15 September 5th, 2008. She tells him Leslyn Camacho is going to
16 come see us next week. Later down, RK wanted to know if we
17 could record Leslyn's meeting with us.

18 They all know what this is about, we're going to pay
19 her, for her to sign this affidavit. He knows, Khan knows,
20 Simels knows, Arienne Irving knows and for what.

21 513, taken from the conference room when the
22 defendants were arrested, September, 2008. Look at the first
23 line. I'm making this affidavit freely and voluntarily. No
24 one has forced me to sign this affidavit nor promised me
25 anything in return for giving this sworn statement.

1 Right off the bat, the first line in the affidavit
2 is absolutely false.

3 That's the bulk of the evidence with regard to the
4 obstruction of justice, tampering of witnesses, the
5 defendant's efforts to obstruct justice. They're charged in
6 two ways, really three. One, they're charged with conspiring
7 to obstruct justice through witness tampering. Again, the
8 same instructions I gave you before, the judge is going to
9 instruct you on the law. If I say something different, don't
10 listen to me, listen to the judge.

11 I anticipate the judge will explain to you what a
12 conspiracy is, just a fancy way of saying an agreement between
13 two or more people to commit an illegal act. In this case,
14 it's a conspiracy, an agreement to obstruct justice, for
15 witness tampering by threats, intimidation or corruptly
16 persuading to influence testimony, or to stop it.

17 Now, when you consider this, don't put Selwyn Vaughn
18 in the mix. He's working for the government. You can't
19 conspire with the government, but Robert Simels can conspire
20 with Khan, Arienne Irving can conspire with Robert Simels, all
21 conspire together, Arienne Irving, Robert Simels, Roger Khan,
22 Barry Dataram, Pereria, Rodrigues, Roberts, Bellfield, they
23 can all agree, did agree to obstruct justice, to find the
24 people they thought were going to take the stand against their
25 boss and either get them to shut up or say what they want them

1 to say, use the options that Roger Khan found worked for him
2 so well in Guyana time and time again, buy them or strike fear
3 into them.

4 Besides the conspiracy charges, they are also
5 charged with an attempt. I anticipate the judge is going to
6 explain to you what an attempt is, a substantial attempt
7 towards achieving a goal, achieving what you desire. It has
8 to be something more than just preparation. That's coaching
9 Selwyn Vaughn to lie, telling him you're a laborer, don't tell
10 them Roger Khan is a drug dealer, the boss; that giving Vaughn
11 the thousand dollars to go find the witnesses and shut them
12 up; that sending the tapes and the transcripts to Paul
13 Rodrigues in Guyana, get to Son's brother to shut him up,
14 sending the e-mail, Arienne Irving sending the e-mail to
15 Selwyn Vaughn to go talk to Vijay Jainairne; that's handing
16 over the list of friends, family, associates of all these
17 witnesses to Selwyn Vaughn so he can find them, put pressure
18 on them, where the pressure needed to be put.

19 It's the affidavits that were drafted for Camacho,
20 Ryan. \$2,500 that was in Simel's office, ready to pay her for
21 signing the affidavit, not the full five. Remember the
22 conversations? Remember what was said? Khan wanted the
23 number brought down, wanted it lowered. \$2,500. Think
24 Camacho would say no to that? Willing to say whatever they
25 want her to say for the money. These are some of the examples

1 of the substantial steps the defendants took to achieve the
2 goals they want.

3 The offer to Leslyn Camacho, that offer indirectly
4 through Selwyn Vaughn to Leslyn Camacho is another charge
5 called bribery; that offer of money to get her to testify the
6 way they want her to is its own charge, a charge of bribery.

7 Those are the obstruction of justice charges, the
8 attempt charges, the conspiracy charge and the bribery charge,
9 but the defendants also have other charges for you to decide
10 on.

11 One, Robert Simels is charged with alone, the visit
12 to the GEO facility. There's not much in serious dispute, no
13 dispute the Queens private correctional facility is under
14 contract with the United States through the United States
15 Marshal Service to house pretrial inmates, from the federal
16 court system.

17 There's no dispute on March 27th, 2008 David Clarke
18 was an inmate at the Queens facility. There's no dispute
19 Robert Simels at no time ever represented David Clarke.

20 There's no dispute on March 27, 2008, Robert Simels
21 went to the Queens facility to see David Clarke.

22 He testified about it. Government Exhibit 700 in
23 evidence, March 27th, 2008, Robert Simels, David Clarke.

24 The only thing that's in dispute right now is what
25 Robert Simels said or did in order to see David Clarke. We

1 called Nicole Waite to tell you what happened. Remember
2 Ms. Waite, the officer working at the GEO. She recognized
3 Government Exhibit 700 because this was her handwriting. She
4 copied the information down from the attorney who wanted to
5 see David Clarke. She copied that information, Robert Simels,
6 time in, time out. Ms. Waite also told you she asks attorneys
7 before getting the inmate if they represent that person. She
8 said on this occasion she did that and Robert Simels said he
9 represented David Clarke, not once but twice. Both times the
10 defendant lied. He didn't represent David Clarke, but he said
11 that he did. A bald faced lie.

12 The defendant got on the stand, we've spent a lot of
13 time talking about his testimony. He gave his explanation of
14 what happened. Ask yourselves, who do you believe? Compare
15 the demeanor of the two witnesses. Recall Nicole Waite's
16 testimony. Recall her demeanor. Did you find her credible?
17 Ask yourselves this. Why would she lie? She doesn't know
18 Robert Simels, never saw him before, hasn't seen him since,
19 didn't give a good physical description, but you know from
20 Exhibit 700 from the defendant's own testimony.

21 Compare the testimony of the two. Also, don't
22 forget the testimony of Edward Sapone, the defense witness who
23 was an attorney that Mr. Shargel asked to go to the Queens
24 facility and go see a person who he did not represent,
25 remember the brother of his client, somebody he did not

1 represent? What did he tell you? I got to the Queens
2 facility, I parked, got there, walked in, the officer said
3 what's the name of your client? What? What's the name of
4 your client? This woman, it wasn't Nicole Waite, no dispute
5 about that, right. You recall what Nicole Waite looked like.
6 Mr. Sapone described the officer he was dealing with as 5-6,
7 160 pounds, 50 or 60 years old if she aged well with a
8 Jamaican accent, not Nicole Waite.

9 A second officer asked the same thing, wanted to
10 know if the inmate you're seeing, Mr. Attorney, is your
11 client. Mr. Sapone gave an answer. He told the name of the
12 person he wants to visit. That answer implied he represented
13 that person. He lied. He lied, but Mr. Sapone corrected it.
14 He testified I just want to make clear you asked me the name
15 of my client. I gave you a name, he's not really my client.
16 Mr. Sapone corrected the area. Mr. Sapone corrected the lie.

17 You think Mr. Simels would? Do you think Mr. Simels
18 would hesitate about lying directly to that woman's face?
19 Didn't hesitate to lie to you. Do you think he would correct
20 a misunderstanding that he created? Do you think he would do
21 what Mr. Sapone did? Absolutely not. He didn't hesitate to
22 lie to you, didn't hesitate to lie to Ms. Waite. Remember,
23 it's his methodology. He thinks the rules don't apply to him.

24 The last charge that you need to consider, ladies
25 and gentlemen, is the wiretap charges. That's this stuff

1 right here, the laptops, the computers, this thing that
2 everyone is calling the base. Both defendants are charged
3 with importing it, bringing it through the mail into the
4 United States from a place in foreign commerce and possessing
5 it.

6 There's no serious dispute this stuff was taken from
7 the defendants' offices in Manhattan. There's no serious
8 dispute it was brought from Guyana.

9 In evidence is Government Exhibit 601, Federal
10 Express records, October 11th, 2007 from Robert Simels at the
11 Pegasus hotel in Georgetown, Guyana to Robert Simels at his
12 office in New York. Turn to the commercial invoice page
13 filled out by the customer, do you recall that testimony, from
14 Mancuso, a description of it? Laptop, described and
15 manufactured, CF-28, the other was CFM-34, a photograph
16 of one of the laptops on the table. I hope this works. I
17 respectfully submit it says CFM 34, another picture. You can
18 inspect the computers yourselves.

19 Here's the other one, CF-28. You see they match.
20 This is the document which shows the shipment of these two
21 laptops from Guyana into the United States in October of 2007.

22 That's not the only piece of equipment that's there.
23 There's also the base. Government Exhibit 804 in evidence,
24 instant messages between Arienne Irving and reaganmrk, Friday,
25 June 20th, Ms. Irving asks on the equipment, did that sound

Summation - D'Alessandro

1717

1 familiar? Yes, I know what he was speaking so, this is the
2 person you thought was running it? Yes, I was only security
3 for the equipment. They need security to run it. One thing
4 Roger asks, do you still have the base or the equipment? I
5 was never shown how to work it. Or do you know who has it so
6 we can get it? Does he need that base? Yes. Can you get it
7 for us and Robert will get it when he is there next. I will
8 do my best to get it. OK. I will get it no matter what it
9 takes. Thank you. That's June 20th.

10 This is June 23rd, three days later. Any chance you
11 can send me the pictures via e-mail, did you see R today,
12 meaning Roger? Okay, perfect. I will Fed Ex it today. Okay.
13 That and the base. Irving, any chance you can put the
14 documents in it too and the base? Perfect. Reagan, and other
15 info -- Irving, Ms. Irving gives the Fed Ex account number and
16 the address for the base.

17 Government Exhibit 602, remember Reagan works for
18 Timber, June 25th, 2008, from William Timber to Robert Simels.
19 What's being shipped? Remember they're talking about the
20 flash drive? There it is, flash drive, computer base power
21 supply. Who signed this? I declare all this information
22 contained in this invoice to be true and correct. Signature
23 of importer. Attorney, Arienne Irving, June 26th, 2008.

24 That's this, brought in June 26th, 2008 to the law
25 offices of Robert Simels. This is base, this equipment that

1 needs to get shown how it works; that you need security in
2 order to run it. Security.

3 To find the defendants guilty of this, not just
4 importing stuff, not just possessing stuff, there are some
5 other things the government has to prove. We have to prove
6 the design of this stuff rendered it primarily useful for the
7 surreptitious interception of wire communications. That's a
8 fancy way of saying it was meant to listen in and record cell
9 phone calls.

10 Second, that the defendants knew or had reason to
11 know that that's what this stuff could do. So, we called
12 Peter Myers, English accent? He told you he is one of the
13 founding members and owners of the company that made this
14 stuff, Smith Myers. He told you it was his company that
15 designed the base, his company that manufactures the base in
16 the United Kingdom, his company that sells the base. It was
17 his company that designs and sells this software which is used
18 in laptops in order to control the base.

19 He explained the base captures cell phone calls. He
20 used the laptops with the software in order to control the
21 base, to target which numbers you want and the laptop digests
22 the information through the base and records it on the laptops
23 through the software.

24 He told you the design of this stuff made it
25 primarily useful to intercept wire communications and he used

1 the word "passively," explained what it meant, without the
2 callers knowing. Didn't make much sense to use it otherwise,
3 right? All done secretly.

4 This is wiretapping equipment. How do we know the
5 defendant knew it or they had reason to know? Let's look at
6 some of the documents that were introduced at trial.

7 If you recall, I showed you a moment ago some
8 instant messages between Reagan and Ms. Irving on June 20th.
9 Here's a meeting, a memo describing a meeting she had with
10 Roger Khan on June 18th, 2008. Roger Khan says Limpy operated
11 the equipment in the beginning and after Roger was arrested in
12 December, 2002, that was the end of Limpy working the system.
13 Ryan never listened to calls or set up the tap. Listened to
14 the telephone calls being intercepted on the equipment, the
15 wiretap. Roger Khan said that after Limpy, he gave the system
16 to Sham, Justin and Reagan, the guy she had instant messages
17 to get that base, that piece of equipment to her in New York.
18 RK said that the small laptop has more calls from David
19 Clarke, so we should get into that one and look at all those
20 calls, ladies and gentlemen, all those telephone calls on
21 these laptops that were intercepted and recorded with the use
22 of that base.

23 They know what this stuff is. It's based on a
24 conversation with Roger she was able to find Reagan to get
25 that piece of equipment. You saw that from the instant

1 messages.

2 532 in evidence from Arienne Irving. November 8th,
3 2007, after the laptops were brought in. Roger says Rick will
4 know where Carl is, but at the time Roger dealt with him, Carl
5 was working for Smith Myers, the company that makes the
6 equipment and he would come and train people and he was living
7 in London, England. Smith Myers, London England, Nancy wants
8 \$500,000 for the new equipment, he worked out a deal to pay
9 \$250,000, when the equipment was given, he would give Nancy
10 the old equipment which she could sell for the balance. They
11 know.

12 Look at what's written on top of that document.
13 Intercept equipment. It's wiretapping equipment. It's
14 primarily designed to surreptitiously intercept cell phone
15 calls. They know it. The calls are on the laptops. They
16 know it, interviewed their client. The base was used in order
17 to make those interceptions. They know it. They had
18 security. This guy is saying I'm security. I don't know how
19 it works, but I was security.

20 These defendants knew what this stuff was. Do you
21 think they're deterred because there's a federal law that says
22 you can't possess it? Do you think they hesitate because
23 there's a federal law that says you can't import it into the
24 United States? Who cares if it's illegal. They think the
25 rules don't apply to them. They're absolutely wrong.

Summation - D'Alessandro

1721

1 When you go back to the jury room, I want you to
2 carefully consider all the evidence in this case. I want you
3 to consider the testimony. I want you to consider the
4 physical evidence, the documents. I want you to consider all
5 this. I'm confident that when you do that, you will return
6 the only verdict that's consistent with the evidence for each
7 defendant, guilty on all counts.

8 Thank you very much.

9 THE COURT: Thank you, Mr. D'Alessandro.

10 Mr. Shargel?

11 MR. SHARGEL: Mr. Solano will go first.

12 MR. SOLANO: Thank you.

13 Good afternoon, ladies and gentlemen.

14 Ladies and gentlemen, two weeks ago I told you what
15 this case is about.

16 (Continued on next page.)

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Summation - Solano

1722

1 MR. SOLANO (Cont'd): I told you there was a story
2 about a young associate who went to work everyday, did her job
3 lawfully, and did her job legally, and that the government in
4 its pursuit of Robert Simels would take every single legal
5 thing that she did and would twist them in an attempt to prove
6 beyond a reasonable doubt that she did something wrong.

7 Ladies and gentlemen, you have heard the evidence
8 in this case. You even already heard Mr. D'Alessandro's
9 summation. The government has failed to do that.

10 Now, in this final opportunity that I have to speak
11 to you, and although I have absolutely no burden whatsoever,
12 I'm going to show you with the evidence how the government has
13 failed to do that.

14 Now, before I do, let me just thank you folks for
15 the incredible attention on behalf Ms. Irving and on behalf of
16 my co-counsel Mr. Byrd for the incredible attention you have
17 paid in this case. I know at times there were a lot of
18 recordings, probably many times it was boring. There were a
19 lot of names that you had to hear, a lot of names that you had
20 to remember, but I thank you, because I saw you, and I saw the
21 incredible attention and how hard you were working.

22 You know, ladies and gentlemen, as hard as you
23 worked then, you are going to work equally hard when you go
24 back to the jury. So what I would like to do with this last
25 opportunity I have to address you is to give you some

Summation - Solano

1723

1 suggestions that's going to make it easier for you to decide
2 Arienne's case.

3 Now, the first thing that I'm going to ask you to do
4 is just don't deal with what is not an issue in this case.

5 What is not an issue in this case for Arienne, and
6 you know, it's not an issue for Ms. Arienne whether Selwyn
7 Vaughn when he came in here and he testified about all those
8 things he did in Guyana, all those things he saw in Guyana and
9 about these people, it doesn't matter to Arienne, her case,
10 whether that is actually true. Because all that matters to her
11 case is whether or not when she spoke to him, whether he told
12 her those things, whether her belief was that he knew those
13 things, whether it was her belief that he did those things
14 with these people. Because if she doesn't think anything
15 different, if she thinks that he's coming in just like an
16 investigator, the way in which he is saying he is, then she is
17 absolutely 100 percent not guilty. And the important thing
18 that you have to always understand is, well, is that nothing
19 after that May 13th meeting --
20 that first meeting that she had -- absolutely nothing that she
21 hears, nothing that she's told, nothing that she reads ever
22 changes that fact that Fineman, that Selwyn Vaughn, was just
23 an investigator.

24 Now, don't get me wrong, please. Don't get me
25 wrong. I am not suggesting in any way when Selwyn Vaughn came

Summation - Solano

1724

1 up here and swore to tell the truth, the whole truth and
2 nothing but the truth to you, that he was actually doing that.
3 Believe me, I am not saying that at all. Okay.

4 In fact, the evidence shows quite the opposite of
5 that. All right. And the Judge is going to tell you how do
6 you assess his credibility. You don't know this guy. What do
7 you know about him? The guy's been paid \$50,000 by the
8 government, and the government says, well, it was only 15,000
9 that he left in his pocket to make it seem like it's nothing.
10 Think about how much you have to work, how much you have to
11 work to keep \$15,000 in your own pocket after you paid your
12 taxes which he didn't do, and you paid your bills how much
13 money you have to make to keep \$15,000 in your pocket. Think
14 about that. You know, he's -- he has to make himself worth
15 something because he's been cooperating. He's got his family
16 over here. He's got an S Visa. He has every single motive to
17 lie, and the Judge is going to the tell you, with a
18 cooperator, you are really have to scrutinize their testimony
19 and I ask you to do. And I am not even going to get into this
20 whole bomb-making things. This guy's recruited by Roger Khan
21 to make some bombs, right, and he's going to deliver these
22 bombs, and instead of delivering them he feels bad for people.
23 Right. He feels bad for these people and takes the bomb and
24 takes it to his house or to his friend's house who is an
25 electronics technician. Remember the guy named Lucky? I'm

Summation - Solano

1725

1 sure that didn't go by you guys. Right. The guy named Lucky
2 is dismantling this bottom. So he's so concerned about people
3 he takes this bomb to his own home to dismantle it. I mean it
4 is just the incredible nature of what he is saying, and the
5 reason the government thinks it's important for you is because
6 the government has to have you believe that Fineman is
7 actually this violent guy and that he knows these people. And
8 in fact, if you go through his testimony, and I, please,
9 invite you to, nothing of what he says, absolutely not one
10 stitch of what he says, is supported with anything. The
11 government is saying just believe him because we have
12 pictures. Every single thing that he testified to, I'm sure
13 you could probably read in the newspaper. Every single thing,
14 and again, as I told you, Arienne's case, it doesn't matter.
15 It doesn't matter. It doesn't matter for her case because when
16 he comes in on May 13 he says: I'm not a violent guy. I've
17 never done anything of those things. All I do is I locate
18 people and I guess that's what Roger Khan wants me to do is to
19 locate people.

20 Now, what I'd like to do is I am going to focus on
21 May 13th for the bulk of my time and then move on, but it's
22 important for you to look at May 13th, okay, because, as I
23 said, May 13th is the meeting that forms the basis of her
24 opinion of her thoughts of what Selwyn Vaughn was going to do
25 in this case and again, it never, never changes.

Summation - Solano

1726

1 You know, all those things that Mr. D'Alessandro was
2 telling you about that sounds so bad, Arienne never heard any
3 of those things.

4 Remember I told you in the beginning of this case
5 what they were going to do is going to try to lump them
6 together? Remember I told you that? I said that they're not
7 going to let you know what meeting she was in and what meeting
8 she wasn't in, remember I told you that? They still didn't.
9 They still didn't because when they asked Selwyn Vaughn on
10 the May 13th meeting who was there, they asked him that
11 specifically. He says Arienne Irving and Robert Simels, and
12 all of sudden, on June 11th when we know she's not there they
13 just don't ask it. They want to you get confused.

14 In his summation he keeps jumping back from meeting
15 to meeting. He never points out to you -- and don't get me
16 wrong, they have absolutely no obligation do that, okay, but
17 he never points out to you when she's there and when she's is
18 not there, and I'm going to make it clear for you now, and
19 you're ever going to consider whether anything Robert Simels
20 says she knows, please go back to the transcript, and even if
21 you have to listen to the tape to find out whether she was
22 there or not, please do so, because what you should do, and
23 what I am asking you to do is to evaluate her case -- not
24 based on what Robert Simels might have said or what
25 Robert Simels thought; it's what she said, what she thought

Summation - Solano

1727

1 and what she heard.

2 So let's go to May 13th meeting first. Remember,
3 this is a meeting even Selwyn Vaughn says I never heard the
4 name Arienne Irving in my life. Arienne Irving never set up
5 any meeting whatsoever -- not the May 13th meeting, pretty
6 much every single meeting in case.

7 Robert Simels even said I really didn't tell Arienne
8 Irving anything about the Fineman meeting until he actually
9 was about to arrive. Right.

10 So let me just go through a couple of spots here to
11 show you that everything she believed about Fineman's role,
12 everything she believed in what she knew in this investigation
13 never changed after speaking to Fineman.

14 First, looking at page 11 of the May 13 transcript.
15 Do you remember on cross-examination of Mr. D'Alessandro he
16 asked Mr. Simels: Did you ever, did you ever ask Selwyn
17 Vaughn what he did for Roger?

18 Right? Of course he did. Right here on the
19 transcript.

20 Take page -- look at page 11 starting from line 22
21 and he's talking about what did he for Roger back in 2003.

22 Fineman: Not directly. Not direct. Indirectly
23 because, umm, you know, as I said, my cousin was working for
24 him. You know, um, and whatever he at the time they might ask
25 they're looking for somebody or something, you know. So I

Summation - Solano

1728

1 helped out with that but when I actually started dealing with
2 the boss himself, it was around that time, you know, 2005,
3 directly. Right.

4 What does Simels ask?

5 THE COURT: Excuse me. Do you want this on the
6 screen.

7 MR. SOLANO: I could, Judge, but it doesn't matter.

8 THE COURT: Maybe a colleague could. I didn't mean
9 to interrupt.

10 MR. SOLANO: That is fine. I could do that.

11 THE COURT: All right.

12 MR. SOLANO: What does Robert Simels say? What would
13 you do?

14 I mean I don't know how much more direct can it be.
15 What would you do for Roger, right? If Fineman wanted to tell
16 him all about what he did back in 2005, all these violent
17 acts, why would he do that? But he does it. What is his
18 answer:

19 Umm. And this is page 11 line 30.

20 Umm, well, at the time I was dealing with this
21 Buxton group, you know, it was now -- there's still, you know,
22 was trying to start up back and he was trying to get at them
23 and these kinds of things.

24 He never says, never says that he was doing any of
25 these violent acts. So why would she think anything

Summation - Solano

1729

1 different?

2 In fact, what is he says is: I was helping out with
3 this Buxton group.

4 He never calls the Buxton group anything other than
5 what she believed was another political organization that she
6 had -- that Roger had problems with.

7 This whole thing about working, whether you have a
8 job or you are a laborer, again, page 13 from that same
9 meeting. This is page 13 and I'm looking at line 27:

10 Ms. Irving: Do you have any family here or
11 friends.

12 Yes, I got a lot of family here and some other
13 business associates and things I am dealing with so I'm back
14 and forth.

15 And then in that same sentence she says: You said
16 that he was a boss, what do you mean.

17 He runs things.

18 Well, yeah, he does written things. He has
19 companies, one of which, which Selwyn Vaughn corroborated, was
20 a timber company. Why would she think anything different?

21 It goes on even more. Remember, Mr. D'Alessandro told
22 you: Well, they should know because the Selwyn Vaughn told
23 him that his cousin Mervin was working for him as a drug
24 dealer. Well, let's see whether they asked him that and
25 whether he actually answered.

Summation - Solano

1730

1 This is page 16. Arienne says: I don't know if I
2 asked this but you said your cousin Mervin was working for
3 Roger first.

4 Yeah.

5 What was he doing?

6 Why would Selwyn Vaughn saying he was dealing drugs
7 for him, right? How does he answer?

8 Umm, he was part of the group and the group -- when
9 the group was originally formed.

10 What kind of answer is that? How is she supposed to
11 think that Mervin Vaughn is a drug dealer, and in fact,
12 there's a conversation earlier about Mervin's arrest and he
13 says he was involved with some drug deal and it was a
14 shooting. Never makes the connection, never says I was
15 selling drugs for Roger Khan. And think about this when you
16 think about this case, if he's coming in Selwyn Vaughn, as
17 this coconspirator, right, and they know it, Arienne Irving
18 knows, and Robert Simels knows it, why place this game? Why
19 the charade? Why hide what you are going to supposedly do?
20 The reason that it didn't happen is because Selwyn Vaughn
21 didn't want to tell them anything about that.

22 In regard to these people up here -- Ricardo
23 Rodriguez, Paul Rodriguez, Gerald Periera -- Arienne Irving
24 always believed that the people that she was dealing with in
25 Guyana -- and remember, she never spoke to any of these

Summation - Solano

1731

1 people, she never met these people, were always investigated
2 right? Every single investigator that testified here told you
3 what they are --prior law enforcement, one was an FBI agent,
4 one was a marine, why would she think anything different?

5 So during cross examination, and something that
6 Mr. D'Alessandro highlighted again, was this question about
7 whether or not Paul Rodriguez and Gerald Periera actually kill
8 people. Here is the part he asked -- he actually looked at.
9 This is page 27 line 23:

10 When you were with them and talking about Paul and
11 Gerald and Sean, did you ever see them actually kill someone,
12 or was it always the police who actually did the killing?

13 Umm, no, no, no one actually knew, you know, who did
14 it because with everyone firing, you know, it is hard to
15 determine, you know, who might fire the fatal shot.

16 Why wouldn't Selwyn Vaughn just say Paul Rodriguez
17 shot them and Sean Delfield shot him, and Gerald Periera shot
18 him, why wouldn't he say that? And if he doesn't say that why
19 should she be held accountable for not knowing? She doesn't
20 know, and specific questions directly to him, he never answers
21 anything other than what she believes.

22 She believes, again, that Roger Khan was dealing
23 with crime fighting, that he was helping the community. Right?
24 And again, they asked him specifically about his crime
25 fighting and this is page 28. This is Vaughn:

Summation - Solano

1732

1 Well, as I said, umm, I believe, umm, in the cause
2 you know, what Roger and his guys were doing, you know, what I
3 mean in terms of the crime fighting effort 'cause, umm, 'cause
4 somebody had to do it. The police were afraid to do it, you
5 know. Somebody's got to do it because it was coming to a
6 point whereby, you know, well, no one was safe.

7 Why does she think Roger Khan is doing anything
8 wrong? Why does she think that Joe Periera and Sean Delfield
9 and all these people that they claim are coconspirators and
10 they have to do that, these people have to be coconspirators
11 for this case to make sense, right? Why wouldn't he just say
12 something different? They are not putting those words in his
13 mouth. He is the one saying those things.

14 And again, something that we really didn't talk
15 about. Remember at some point Selwyn Vaughn is saying I don't
16 really want to go into that stuff. You know, I want to make
17 sure that somebody tells me something, I want to make sure
18 it's okay with Roger, remember, and he says they start talking
19 about possibly visiting him at the MCC.

20 And one of the things that Selwyn Vaughn says is:
21 Well, umm, can I get in to visit him and Arienne -- Robert
22 Simels says: We can try to get you on the list but -- and
23 then Selwyn Vaughn says but -- but I don't have a visa, I
24 don't have a passport, I overstayed my time.

25 And he says -- and Robert Simels says: Well, you

Summation - Solano

1733

1 know you can be family.

2 And Selwyn Vaughn says: I could be family suggesting
3 to them lie on the application. I could be family.

4 And here we are on page 29:

5 Irving: They only have a certain number and you
6 have to be related. He's only allowed one.

7 Vaughn: You want to tell me I can't be a relative?
8 Come on. My father is Indian, so why can't I be a relative?

9 And what does she answer: I think he's allowed one
10 friend.

11 She doesn't say, oh, yeah, let's try to make him a
12 relative.

13 And then remember the application that they seized,
14 Government 505? Right? This is her handwriting, right? You
15 can see the difference between Selwyn Vaughn and hers:

16 Relationships to above named inmate: Friend. Right.
17 And then this section number ten talks about how long have you
18 known him. Five to six years.

19 And if you remember and recall in this meeting he
20 says, well, first I knew Roger in about 2003, and then he kind
21 of changed it, but that's five years.

22 Again, nothing, absolutely nothing that changes her
23 belief that what Selwyn Vaughn is coming from in to do is to
24 investigate and here there's another section talking about how
25 he is working, and that whole section about testifying, about

Summation - Solano

1734

1 having a job, you know, I got to tell you. Think about that.
2 All right. Sometimes you're told something to believe, you're
3 just given a conclusion without really going through the
4 entire sort of logical explanation to see whether it actually
5 makes sense. This is an international drug case, right? They
6 have really been working on this case for two years. This guy
7 Selwyn Vaughn comes in and the one thing that they got to make
8 sure that they got down on this is that you got a job, right?
9 That's the one thing to make sure. You know what? If they ask
10 you, you got a job because that is going to crop the case,
11 right? Think about how that is and you know what? They never
12 said lie about having a job. He says, look, I know you said
13 entrepreneur and I know you talked about working and being up
14 with business associates, you got to say whenever that is.
15 You are a laborer. He is not telling him to say laborer. He
16 says whatever that is. Is he same thing with this business
17 about Shortman, right. Whether or not you are going to
18 testify and you are going to say that Roger is Shortman and he
19 is not the only Shortman that you know in Guyana. The fact of
20 the matter is in the beginning of the meeting Fineman is the
21 one who comes in and says my name is Fineman. How did you get
22 that name. That is how we go. In Guyana people that are fine
23 are called Fineman. People who are tall are called Tallman.
24 This is not something that Robert Simels and Arienne Irving is
25 hearing that's strange, and in fact, when he starts talking to

Summation - Solano

1735

1 him about that specific part about the testimony he says I
2 know that Roger Khan is Shortman in my group. Robert Simels
3 doesn't say in front of Arienne Irving you have to lie about
4 that. He says, well, don't you know other short men, right,
5 and we all know now there were other Shortman. He says don't
6 you know other short man. And finally, he says, and
7 Mr. D'Alessandro showed it to you, he says quite possibly
8 there are other short man in Guyana. And this is the part of
9 the meeting when he's saying, well, you know I don't really
10 want to go into much. And the suggestion is, well, you know
11 what, let's take a letter. If you're scared to talk to us, if
12 you don't want to give us all the information you have, let me
13 go speak to Roger, and then, we will have him give you a
14 letter to show you it's okay to speak to us, right? Remember
15 that discussion?

16 And this is the letter that ends up being sent to
17 Selwyn Vaughn and look how menacing this letter is. Look how
18 menacing this letter is.

19 Dear Selwyn, thank you, again, for everything. I
20 really need you to help. Do not be afraid to tell all that you
21 know. These are my lawyers and you can trust them. I speak
22 the Paul often. He will confirm.

23 So Arienne Irving takes this out at MCC, right? She
24 takes this out. What in this letter makes her believe that
25 there's something going on that's wrong? What about this

Summation - Solano

1736

1 letter is so wrong?

2 And in fact, ladies and gentlemen, even taking this
3 letter out isn't wrong. You know, he heard from Tony Ricco,
4 which was interesting. This is a guy who has been an attorney
5 for 29 years. He is an expert. Right. Qualified as expert
6 in criminal law. He doesn't even know the rule. He doesn't
7 even know the rule. He says you can't take anything out. You
8 can't give anybody anything, even a business card, but you
9 know who told you something different is the government's own
10 witness. You take a look at Mr. Rodriguez' testimony at page
11 886.

12 Question: What are they permitted to hand over to
13 their attorney?

14 Answer: It's not, like, about one inch paperwork
15 they are allowed to give the attorneys.

16 Question: That is supposed to be legal?

17 Answer: Yes, legal document, social, law, anything
18 like that. Legal material.

19 He is not talking about what kind of material it is,
20 he is just talking about the size, and you know what, this
21 isn't legal (indicating)? Please help us in the investigation,
22 how is this not legal? Because in the inmate doesn't write a
23 motion? Of course, this is legal, ladies and gentlemen. Of
24 course, this is absolutely 100 percent legal.

25 You know what. It continues on in this meeting and

Summation - Solano

1737

1 in fact, you know there's a part going back to the short man
2 topic there's a part where Robert Simels -- and Arienne Irving
3 isn't in the meeting at this point, but there's a part where
4 Robert Simels says: Look, if you have to testify about
5 Ricardo and all these others, you could say Ricardo is Fatman,
6 right? If there's a reason to try to lie why wouldn't he just
7 say, no, we don't want Ricardo to be Fatman. Lie about that.

8 Again, in terms of being an investigator, which is
9 what Arienne Irving believed, Selwyn Vaughn towards the end of
10 the meeting on page 50 line nine:

11 Question -- I am sorry. This is Vaughn.

12 Vaughn: Well, finding people was my speciality, so
13 if there's anything I can to do help, I'm here, you know what
14 I mean, I'm here. That is why he wanted me to talk to you in
15 any case, I'm sure.

16 Why would those words lead Arienne Irving to believe
17 that he's nothing more, again, than an investigator? In fact,
18 remember the part of the recording where Robert Simels then
19 says: I think we should change your name from Fineman to
20 Findman F-I-N-D man? That's the whole reason why she believed
21 that Selwyn Vaughn was coming in, in this case, and again
22 nothing changed that.

23 Now, I am going to get into these memos in a second
24 but let me just tell you that Arienne Irving, and we've seen
25 her memos and ladies and gentlemen, please, look at them, they

Summation - Solano

1738

1 are thorough, they are complete and they are detailed. Before
2 I say anything about the memo in particular, let me just ask
3 this question to you and have you just think about it for a
4 moment. If Arienne Irving had known on May 13th that the
5 meeting she's having with Fineman and Robert Simels is some
6 conspiracy to commit a crime, well, why in the world did she
7 actually write the memo? Why would she write the memo?
8 Because it's never going to see the light of day? I am going
9 to talk about that in a second, because that's the most
10 illogical preposterous thing you could think about. All
11 right.

12 But what about I asked Mr. Mazzella on
13 cross-examination about this memo and I invite you, if you
14 want, I invite you to look at this memo bullet point for
15 bullet point to see if there's absolutely anything different
16 or wrong between this memo that she wrote and that meeting and
17 what did Mr. Mazzella say when I asked him on cross
18 examination about that? Page 1015 line 18:

19 Question: You, obviously, had an opportunity to
20 compare that memorandum with the actual transcript of the
21 meeting on May 13th, correct?

22 Answer: Yes.

23 Question: And everything that's included in that
24 memorandum, every single bullet point is correct and true
25 about what happened in that meeting?

Summation - Solano

1739

1 Answer: Yes.

2 And then remember on cross examination Mr. Fodeman
3 said: Well, there's nothing in there about being a laborer.
4 Remember that huge important thing about having a job, right?

5 But you know what, it's in there. Her memo is not a
6 transcript, ladies and gentlemen; her memo is a summary of
7 what happened. And what does she say on the second page, the
8 third bullet point from the bottom:

9 Fineman said he would not have a problem testifying
10 but wants to talk to one in GT, which is Guyana, for Roger to
11 make sure it's okay.

12 The next bullet point: Fineman said he can help
13 locate people in the U.S.

14 Last bullet point: Fineman said he overstayed his
15 visa, so isn't sure when he is going back to the GT because he
16 wants to stay here if he needs to help Roger.

17 Every single thing and there's a whole mention here
18 about him, Fineman, saying that Roger's Shortman, everything
19 single thing that the government claims is bad is in this
20 memo. Why write it, ladies and gentlemen? Why write it?

21 THE COURT: Excuse me for interrupting. When you
22 get to a logical breaking put, we will break for lunch.

23 MR. SOLANO: I say this is logical.

24 THE COURT: Let's break for lunch.

25 Don't discuss the case.

Summation - Solano

1740

1 We will resume at two o'clock. All rise.

2 (Whereupon, the jury exited)

3 THE COURT: Mr. Solano, ballpark, how much longer
4 would you say?

5 MR. SOLANO: Thirty to 45 minutes.

6 THE COURT: See you at two o'clock.

7 (Whereupon, the Court recessed for lunch)

8 (Continued on next page)

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Summation - Solano

1741

1 A F T E R N O O N S E S S I O N

2 (The following occurred in the absence of the jury.)

3 THE COURT: Please be seated, everyone.

4 Bring in the jury, please.

5 THE CLERK: Yes, Your Honor.

6 (Jury present.)

7 THE COURT: Please be seated, everyone.

8 Okay, Mr. Solano.

9 MR. SOLANO: Thank you, Your Honor.

10 Good afternoon, ladies and gentlemen.

11 Before we broke for lunch, I had just finished
12 talking to you folks about the May 13th meeting, which I
13 submit to you is the most important meeting for Arienne.

14 One, because it's the one that she is at the most.
15 Even though she is in and out of that one, she is at that
16 meeting the most.

17 The second reason it is the most important meeting
18 is because it forms the basis of her belief of what Fineman,
19 this person Selwyn Vaughn, is going to do for them and that is
20 work as an investigator.

21 Again, that never changes. There is nothing that
22 she hears, there is nothing that she sees, there is nothing
23 that she is told that changes that belief.

24 I want to take you now to the June 11th meeting of
25 2008. This meeting, ladies and gentlemen, is the -- the best

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1 example of Arienne Irving's role not only in the office but
2 the best example of her role in the Khan case. Remember, this
3 is the June 11th -- the meeting where she is on jury duty,
4 just like you folks. Again, it's one of those meetings where
5 the government could have easily said to Selwyn Vaughn, was
6 she at the meeting. But they don't.

7 In fact, and you have these as a guide. This is the
8 transcript -- the front of the transcript. You see how it
9 says Arienne Irving? I don't want you to be mistaken if you
10 deliberate and you have these transcripts to look at that and
11 just think that she is at the meeting because her name is
12 there.

13 Remember, this is the meeting where she -- Selwyn
14 Vaughn has come in to speak to Robert Simels. It's June 11th.
15 There is absolutely no evidence that Arienne Irving knew that
16 this meeting was going to occur. None at all.

17 She is on jury duty. There is a whole conversation
18 between Robert Simels and between Selwyn Vaughn and then
19 remember he needs something. He is trying to find some
20 information. He doesn't have it.

21 So what does he do? He calls up Arienne and leaves
22 her a message. If you take a look at -- this is from the June
23 11th meeting, page 30. Begin on line 25. UF, which is
24 unidentified female, that's Juanita Singh, the secretary.
25 Arienne is on the line. Simels, okay, Arienne. Hey Robert,

Summation - Solano

1743

1 how is it going. All right. A couple of things. Where do I
2 find Leslyn Camacho's address?

3 Let me stop there.

4 Do you see any discussion about why he needs Leslyn
5 Camacho's address? He doesn't stop there and say, okay.
6 Before I ask you the questions let me tell you what's going
7 on. I am at a meeting with Selwyn Vaughn. We have just
8 discussed the whole bunch of things at this meeting. And now
9 I need you, before I actually get this information, to tell
10 you what everything is about so you can give it to me.

11 He doesn't have any reason to. Okay. Her role is
12 an associate. She is the one in charge of knowing where all
13 of these things are at. So when Robert Simels calls her up
14 and says, hey, where is Leslie Camacho's address. She says,
15 well, it's in the Leslie Camacho file. That's what she says.
16 She's telling him exactly where the information is where all
17 these witnesses are located.

18 Again, there is absolutely no evidence -- no
19 conversation before that. She doesn't know Selwyn Vaughn is
20 going there. She doesn't even know he is there.

21 If you take a look at that same meeting, page 32.
22 Simels says, line 17, I'm sitting here with Fineman and -- and
23 Irving says, is that why you needed the names to look up.

24 She doesn't even know that he is going to be at this
25 meeting. You think about it. Think about you being right in

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Summation - Solano

1744

1 on jury duty. Back at the office, wherever you work, you
2 don't know who is having a meeting. You don't know what that
3 meeting is about. Why should you be responsible for what's
4 being said even if something was going on?

5 That's what they are asking you to do. They are
6 asking you to hold her responsible because she is actually not
7 at the meeting. I am going to talk about this a little bit
8 more. Think about that logic. Because she is not at the
9 meeting, she is more guilty.

10 Now, what I want to do is I want to talk to you
11 about this June 13th memo. Mr. D'Alessandro touched on it.
12 June 13th memo, which one of the things that Arienne Irving
13 says based on what Roger says is that Roger says use your
14 discretion with this money. Give him a thousand dollars.

15 Somehow Mr. D'Alessandro is trying to connect that
16 memo with something that happens on June 20th, about killing
17 David Clarke's mother, or not killing her mother -- his mother
18 and some other things regarding some witnesses.

19 Now, if you are going to remember anything about
20 what I say in this time with you, I want you to please listen
21 to this part. What I would like you to do is not stop at the
22 illogical conclusion that Mr. D'Alessandro wants you to stop,
23 which is simply this. Because there is some sort of
24 conversation on June 20th, that conversation has to be
25 reflective of something that happened on June 13th.

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Summation - Solano

1745

1 Remember when I spoke to you at the beginning two
2 weeks ago I said, the existence of these memos alone, the fact
3 that they actually exist is the best evidence that Arienne
4 Irving is not guilty.

5 So let's think about this. Okay. There is a
6 conversation which we know now that Arienne Irving was not a
7 part of. Arienne Irving did not know it was going to happen.
8 So let's use the government's example. Okay. Not my example.
9 My position, mine. The government's position.

10 Robert Simels and Selwyn Vaughn have a conversation.
11 In that conversation again the government's position consists
12 of the throw away phones, what you would do to neutralize
13 Clarke and the like. Arienne Irving we know is on jury duty
14 the 11th, we also know she is on jury duty the 12th. There is
15 no evidence that she went back to the office and was told
16 anything.

17 But again, for this example alone, let's just say
18 that Robert Simels told her to go see Roger Khan and actually
19 said listen, Arienne. When you go speak to Roger, tell Roger
20 everything that I spoke to Selwyn Vaughn about. That we need
21 this band of criminals to go look for people. We need throw
22 away phones and we need a thousand dollars. We also need a
23 thousand dollars because we have to do certain things to
24 people. We can do whatever we want with David Clarke's
25 mother. Just don't kill her.

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1 We can do whatever we want with George Allison. The
2 same with Alicia Jagnarain. The same with Leslie Camacho and
3 so on.

4 So let's just say again, their position, Arienne
5 Irving goes to speak to him. And Roger Khan gives her all
6 these answers to all of these questions. Here is where their
7 logic fails. Here is where they have the biggest problem.

8 Armed with this illegal information, right, remember
9 they have to prove beyond a reasonable doubt that she knew,
10 right, knew about this. She knew about these illegal
11 purposes. She says to herself, okay. Let me write this in a
12 memo. What they are saying to you is, she understands that
13 she has this illegal information and she writes it in a memo.

14 Then what Mr. D'Alessandro tells you is, not only
15 does she write it in a memo, and I think he used the word
16 "couched" on cross-examination. She couched the term as
17 investigation, meaning she disguised the term as an -- as an
18 investigation.

19 And then she also left some people out. So she
20 specifically wrote some things in, disguised it, and on the
21 other hand left people out.

22 Think about that. See whether or not that actually
23 makes sense to you.

24 If she is going to write something, that she knows
25 is illegal, first I would ask you, why would she write it?

Summation - Solano

1747

1 Why would she write the memo?

2 Let's think it through. Well, she writes the memo
3 because she doesn't think anyone will ever see it. It will
4 never get the light of day.

5 Well, if that's the case, then why disguise it? If
6 this thousand dollars is not for an investigation but the
7 thousand dollars is so Fineman can get his band of criminals,
8 why not just write, here is a thousand dollars to get your
9 network of people and to gather some materials and buy some
10 phones.

11 You heard what she does is write everything down
12 verbatim. With David Clarke's mother, if no one is going to
13 see this memo, why not say simply whatever you are going to do
14 with David Clarke's mother do. Just don't kill her.

15 Why does she write -- let me just put this here on
16 the Elmo.

17 Why does she write, RK said to make sure to tell
18 Fineman to not do anything stupid in terms of Clarke's mother
19 and that he will leave it to RMS to decide if someone should
20 go speak to her. He leaves it to RMS's legal opinion about
21 any ramifications.

22 Why would she say that? Why would -- disguise it in
23 this way to speak?

24 Here is another thing that doesn't make sense.
25 Again, when you think about why would she write this memo.

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1 Again, the -- the idea is that she knows that this is illegal
2 and she somehow has to get this information to Robert Simels.
3 She is not going to mail this out. She is going to be seeing
4 him within minutes. I got a better idea. How about this
5 proposition?

6 If she believes that somebody is doing something
7 illegal, right, and she knows that she has to give these
8 answers, these illegal answers, how about just tell him, how
9 about just walk into the office. Think about how this doesn't
10 play itself out logically. Instead of her just saying,
11 Robert, all those illegal things you asked about, these are
12 the answers. Instead, she types up a memo. Purposefully
13 disguises certain things, right, purposefully leaves certain
14 things out and then instead of telling him, she hands him the
15 memo.

16 You see, when you take their proposition and you
17 take it to its logical conclusion, what they are saying it
18 means is illogical. What that means, ladies and gentlemen, is
19 it's reasonable doubt. It's more than reasonable doubt.

20 Remember I asked specifically, I asked specifically
21 on cross-examination of Mr. Simels and this is page 1564, line
22 15.

23 Question: You stated that after reading
24 Ms. Irving's June 13th memo, her meeting with Roger Khan, you
25 understood that to mean certain things, correct?

1 Answer: I did.

2 Question: Did that have anything to do with any
3 conversations you had with her?

4 Answer: No. Nor -- no. I'm sorry. No.

5 Again, think about it. If Arienne Irving is
6 involved in a conspiracy, if Arienne Irving is involved to
7 intimidate and threaten and corruptly persuade people, why
8 would the memo exist? If the memo existed, why in this form?

9 Ladies and gentlemen, the fact that this memo exists
10 is the best evidence that she is not guilty. Not that she is
11 guilty. It is that she is not guilty.

12 All right. You know it reminds me of a quote, a
13 philosopher, which says, you know, falsehood has an infinite
14 number of combinations. But truth has only one mode of being.

15 That's what they are trying to do here. They are
16 trying to say if she left it in the memo, it's evidence of a
17 crime. If she took it out of the memo, it's evidence of a
18 crime. If the memo exists, it's evidence of a crime. If she
19 disguises it, it's evidence of a crime.

20 That doesn't make any sense. What kind of disguise
21 is this? What kind of couching is this? When he says, we
22 will leave it up to RMS to decide if someone should go speak
23 to her.

24 You want to know a code? You want something that's
25 decipherable? You want something that's cryptic, why wouldn't

Summation - Solano

1750

1 she write, you know, tell Fineman he can send David Clarke's
2 mother flowers. Or give Fineman cab money. Not here is a
3 thousand dollars for the investigation.

4 Do you understand, ladies and gentlemen? The fact
5 that the memo exists is evidence that she is absolutely
6 100 percent not guilty.

7 Now, Mr. D'Alessandro then talked about a June 17th
8 email and conversation and you heard that conversation where
9 Arienne Irving is speaking on the phone with -- I'm sorry.
10 Arienne Irving is speaking on the phone with Selwyn Vaughn. I
11 think that conversation is the biggest example of why Arienne
12 Irving is not guilty.

13 Because, first of all, Selwyn Vaughn says in that
14 conversation, she -- he doesn't even want to speak to Arienne
15 Irving. This is a person who supposedly is part of this
16 conspiracy. Right?

17 Let's take a look at June 17th. It is page one.

18 Again, line 22, this is Juanita Singh, the
19 unidentified female. Do you want to talk to Arienne?

20 And Vaughn says, no, not necessarily. I don't have
21 to talk to her. If you can just give me an idea if he is
22 going to be back tomorrow, whenever, so I can call him, you
23 know.

24 She is -- he doesn't want to speak to her. Why
25 doesn't he want to speak to her? She is not involved in this.

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Summation - Solano

1751

1 He knows she is not involved in this.

2 Then he goes on to say, when she finally gets on the
3 phone, to tell him when Robert is coming back from Guyana, and
4 this is now page two.

5 Vaughn says, all right. I know he was going down
6 there because he -- he sent me email before he left.

7 Arienne then says, line 25, right. Right, cause he
8 sent you in relation to some of the people I saw -- I saw the
9 email he sent to you because I had met with Roger.

10 They want you to believe that this is the June 13th
11 email that she is talking about. Right? I will show you the
12 June 13th email. But it's not. That's not the email she is
13 thinking about.

14 Let me show you the email she is thinking about.
15 Remember she says I saw the email in relation to the people.

16 This is Government Exhibit 200, from the first
17 emails that are sent.

18 Thank you for meeting with us. Awaiting your note
19 for R. People we are looking for in New York are Leslie
20 Camacho, Clarke's girlfriend. I don't have to go through it.
21 That's the email that she is thinking about.

22 She is not thinking about the June 13th email that
23 Robert sends.

24 By the way, if she is even -- if she's seen that
25 one, I'll tell you why she didn't, one, you can take a look at

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Summation - Solano

1752

1 it here, which is Government Exhibit 208. She is, first of
2 all, not cc'd on this email. Look at what it says. Simply
3 says, be careful in your efforts to gather information and not
4 to do anything that can be misconstrued by anyone. These are
5 difficult times and people will draw the most unfavorable
6 inferences. So be cautious. Have authorization for payment
7 for gathering materials.

8 She never sees that email. If she did, what would
9 be wrong with seeing that email? I'll tell you why you know
10 she didn't see the email. This email is sent at 12:50 pm on
11 the 13th. We think -- you could assume that she is back at
12 the office because she just came and she wrote a memo after
13 seeing Roger. What? He is going to CC -- he is going to not
14 CC her. And say let me show you the email. On the 14th he
15 leaves to Guyana and doesn't come back until the 19th. Why
16 would she have seen this email? When she did, it's exactly
17 what she said Roger told her.

18 Just to go back to that June 13th Elmo, just so you
19 know. Remember, there was a -- first of all, she believes
20 that Fineman is an investigator. If Roger Khan, and we know
21 that she writes things down verbatim. If you look at her
22 memos they are so detailed that she will tell you Roger Khan
23 says. Roger Khan told me. She will say, we discussed, when
24 they discuss things. She will say, RMS said, meaning this is
25 the information she relayed.

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Summation - Solano

1753

1 That's what she says. What's wrong with what's
2 said? She says, here is a thousand dollars for the
3 investigation. Nothing wrong with that.

4 And remember when I asked Mr. Simels, what was going
5 on around that time? Mr. Simels says, there was an anonymous
6 jury motion that had been granted, which means that the jury
7 is not going to be sequestered, but they are going to be taken
8 care of in a different way. Roger Khan was concerned, he
9 didn't want even the approach, the approach itself to David
10 Clarke's mother to be misconstrued in any way.

11 That's the message that's being relayed. That's the
12 message that's reflected in that June 13th memo. Nothing
13 about Leslie Camacho and David Clarke. There was nothing in
14 that memo about them because that was not discussed.

15 Separate and apart, Robert Simels visited Roger Khan
16 on June 10th. How do we know whether or not Roger Khan is
17 just giving the answers that -- about something that they
18 discussed on the 10th?

19 Ladies and gentlemen, you have to think these things
20 through. That's what I invite you to do. Please, just think
21 these things through. Just don't say because something was
22 said Arienne Irving had to know it.

23 Again, I am going to stress to you, please, evaluate
24 this case and decide this case what you know that Arienne
25 Irving knew, what you know Arienne Irving heard or said. Not

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Summation - Solano

1754

1 what somebody else thought or what somebody else knew or what
2 somebody else said.

3 Which brings me to the June 20th meeting. This is
4 the meeting that talks about not killing the mother. This is
5 the meeting that talks about do whatever you want to do as to
6 George Allison.

7 Again, we know 100 percent for a fact that Arienne
8 Irving wasn't at that meeting. At that point. Right. Who
9 tells us that? Fineman, finally when I ask him, hey, at that
10 point, remember I pointed to this section, which I will show
11 you again. This is page 17 of the June 20th meeting.

12 It is line 34.

13 Irving: Who is it?

14 Simels, who.

15 Irving, the person you asked for, Regan.

16 Meaning Regan, this Willems Timber company employee.

17 Remember, I asked Mr. Simels, what happened at that
18 time?

19 Oh, Arienne Irving left. She spoke to Regan and she
20 was on an instant message.

21 There is an instant message that you have seen. I
22 will show you again. This is I believe Government
23 Exhibit 804.

24 Take a look at that. The time that this instant
25 message starts is 13:43 all right. She is out of the meeting

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Summation - Solano

1755

1 at that point. This thing goes on until after 2:00 pm. She
2 is just not there. You could hear her heels leave. You know
3 when she leaves.

4 In fact, there is a part before Robert Simels leaves
5 the office and there is like two or three minutes of silence.

6 If Arienne Irving was in that meeting, she would be
7 talking to Selwyn Vaughn and you would hear it.

8 Why is that important? Why is it important to know
9 that Arienne Irving wasn't at that meeting? Because she
10 doesn't hear anything. She doesn't hear anything that's said.

11 So why would she ever believe that Fineman is
12 anything other than an investigator? She would have
13 absolutely no reason to believe that. She would have no reason
14 to believe that.

15 Again, here we go with the government says, if she
16 is not at the -- what is it, just luck? Luck that she was not
17 at the meeting? Right? Maybe it was. But why would she be
18 held accountable for that? Why is she penalized because she
19 doesn't hear it?

20 Think about what they are saying again. Falsehood
21 has an infinite number of combinations. They are not saying,
22 not only does she not write it, it, means she is guilty. She
23 writes it, she disguises it, all those things means she is
24 guilty.

25 Now because she is out of the meeting and doesn't

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Summation - Solano

1756

1 hear it, that's evidence of her guilt.

2 Just think about the logic. The less evidence there
3 is, is what they are saying, the more she is guilty.

4 Just think about logic. You know what? The
5 government said, Mr. Brownell said in the beginning of their
6 case in their opening remarks, the lawyers here are trying to
7 win at all costs. You know what? Absolutely 100 percent
8 correct.

9 But it was the government, it's the government
10 lawyers that are trying to win at all costs against Arienne.

11 It's -- it's one of those things when you were a kid
12 and were playing that game, remember that game, heads I win,
13 tails you lose? Nothing she can do. She can't do anything.

14 Essentially the fact that she went to work, she is
15 done. She is guilty. That's what they are saying to you.

16 Take reason, take logic, throw it out the window.
17 We think he's guilty. So she must be guilty. Throw it out
18 the window.

19 I know you won't do that. That's why I am
20 explaining this to you. Just think about it. Think about it
21 logically. Think about it critically. Think about it
22 reasonably.

23 When you do, Arienne is not guilty. They just
24 cannot prove their case beyond a reasonable doubt.

25 Now, in this same meeting, at the end of that

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Summation - Solano

1757

1 meeting, Arienne gives a list of -- to Fineman of names and
2 addresses. It's the same type of thing she did with every
3 other investigator. Gives those pictures of Farrah, the same
4 thing she's done with every kind of investigator.

5 In fact, you know who got those pictures? Juanita
6 Singh, the secretary. Remember, Juanita Singh in July, the
7 July meeting, July 30th. Juanita is talking to Fineman. She
8 is like yeah, I tried to find Farrah. I went to the strip
9 club.

10 It's here, it's there. Juanita Singh is also
11 involved in this?

12 Again, why would Arienne think anything different?
13 If Juanita Singh, the secretary, was looking for someone that
14 Fineman is now looking for?

15 Again, nothing that happens in this entire case ever
16 changes her belief, ever, that Fineman is only being used as
17 an investigator.

18 Let me talk about this equipment one second.
19 Because the equipment -- this email, this instant message, I'm
20 sorry, with this guy Regan. He's a Willems Timber Company
21 employee. He's not a police officer. In fact, in the
22 May 13th meeting, Fineman actually says, Regan is not like
23 Sean and not like Paul. Because he's not a cop.

24 He's a regular, simple employee, who is scared.
25 He's scared to get involved.

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Summation - Solano

1758

1 In the instant messages he keeps telling Arienne,
2 I'm scared. These people in Guyana, they are little crazy. I
3 don't want to get involved in this.

4 Arienne even says at one point, they are not going
5 to even find this instant message stuff. Don't even worry
6 about that.

7 He's scared. He's nervous.

8 So what happens? Let's take a look at this instant
9 message regarding this base and the government's equipment.

10 This is Government Exhibit 804 again. It says, hi.
11 On the equipment, did that sound familiar?

12 Yes. I know what he was speaking.

13 Okay. When is the person -- then is was the person
14 he thought it was running it?

15 Yes. I was only security for the equipment.

16 One thing Roger asked me was, do you still have the
17 base for the equipment?

18 Not the equipment. The base for the equipment. And
19 what does she think the base means? Remember I told you in
20 the opening, I said they will show it to you. They will show
21 you exactly what she thought it was. It wasn't the
22 surveillance equipment.

23 How do you know that's true? First of all, there is
24 a June 18th memo. There is a June 18th memo that the
25 government put in evidence. This is two days before that

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Summation - Solano

1759

1 instant message. By the way, this memo June 18th, it's in
2 between the June 13th memo, the bad one that they think, and
3 this June 20th meeting. There is nothing in here about Leslie
4 Camacho. There is nothing in here about David Clarke.

5 Wouldn't you think that this would be the memo? Two days
6 before this meeting that would have all the important stuff?

7 Look at this memo for a second.

8 Take a look at the second bullet point. It says RK
9 said as far as Brian Lall he never really worked the
10 equipment. RK would rent houses in his name and then have the
11 equipment set up there and if there was a power outage or
12 something like that, he would talk Brian through restarting
13 the system. It goes on.

14 He is talking about a power outage. That's why
15 Arienne Irving believed when Robert Simels says hey, ask Regan
16 is that the power base. She is thinking exactly what Justin
17 Kern testified to. Remember the only witness we called? We
18 called one witness, one witness only.

19 Justin Kern told you, you know what that is? That
20 is a thing called an uninterrupted power source. It was a
21 giant battery. Essentially, this big battery about two feet
22 long, about eight inches wide and it's got a couple of things
23 in it.

24 Let me show you something.

25 (Continued on next page.)

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Summation - Solano

1760

1 MR. SOLANO: (Continuing.)

2 Take a look at government N-72. He's literally
3 describing a universal, uninterruptible power source or
4 supply.

5 I asked him what's in the back of that
6 uninterruptible power supply? He says USB slot. There's a
7 slot. He says there's a serial port. There's a serial port.
8 He says the thing weighs about 30 or 40 pounds. Try to pick
9 it up, exactly the same. There's a fuse? There's a fuse. If
10 you look at the back, it appears there are batteries in it.
11 That's what Arienne Irving believed was coming in, based on
12 the June 18th memo regarding a power outage, her understanding
13 what's in the office.

14 Remember I specifically showed him a photograph of
15 what was in the office, right? This is Irving number eight in
16 evidence. Remember I pointed to this thing here? What is
17 that? The agent who did the search warrant didn't know what
18 it was. They left it there, right? Because this doesn't look
19 like anything other than a giant battery, which in fact when
20 Agent Maher who was armed with two computer experts, when they
21 took this thing, did they write surveillance equipment? No.
22 They said power module. They didn't even know what this thing
23 was, right? This is Agent Maher, the guy who is in charge of
24 verifying what is taken, making sure what is taken is
25 responsive to the search warrant. He doesn't even know what

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Summation - Solano

1761

1 that is. He says power module.

2 You know why? On it in handwriting from Guyana, it
3 says power module from office computers. Office computers.
4 That's why he doesn't know what it is.

5 Let me explain and show how there's more proof she
6 thought this was nothing more than a power supply. Remember
7 that Federal Express person who testified? He said sometimes
8 we have to send things back because we don't know what the
9 inventory is. This is Government 602. He said we have to
10 call and we have to get somebody on the other end to tell us
11 what's in there. Remember they described it as a power
12 module.

13 Arienne Irving I submit is the one that gave this
14 information, right? What does Arienne Irving say? Computer
15 base power supply. Computer base power supply. That's what
16 she thought it was all the time. How do you know it's further
17 evidence she didn't know what this was? Look at the price she
18 assigns to it. It's not \$40,000, it's a thousand dollars,
19 they got it in reverse. The flash drive doesn't cost \$1,000.
20 You know how there's more evidence you know she believed that
21 was not surveillance equipment? Because she did know it --
22 in fact, in Mr. Simels' case they put in all the evidence that
23 everybody knew about this; that it was part of court filings.

24 Here's a memo from November 8th, 2007. I don't have
25 to read it through, but Roger Khan is talking about the cost

1 of that equipment. He says it's hundreds of thousands of
2 dollars. Do you think if Arienne Irving believed what was
3 coming in was surveillance equipment, the same surveillance
4 equipment that cost \$500,000 and she's making \$55,000 a year,
5 you don't think she's going to tell the person at Fed Ex that
6 cost like \$500,000? Don't just put a thousand dollars. If
7 that thing gets lost, I'm probably going to be responsible for
8 it. That's how you know, ladies and gentlemen, she didn't
9 think this was anything other than a power supply.

10 Look at it. It doesn't look like anything else.
11 When you think about whether or not she's guilty of importing
12 this equipment, think about that, but there's so much more
13 with regard to these computers.

14 First, the government is telling you that the entire
15 thing makes out this surveillance equipment, not just this
16 base, right, but they also say the computers. There's not
17 absolutely one piece of evidence, one piece of evidence that
18 suggests that Arienne Irving had any dealings with that
19 computer coming in or that computer dodge (indicating). None.
20 Even if you believed she was responsible for bringing in this
21 one piece, and it was surveillance equipment, and she believed
22 that, she still can't be guilty because she didn't bring the
23 whole thing in. There's absolutely no evidence that she was
24 responsible or knew about it coming in.

25 Ladies and gentlemen, when you think about that,

Summation - Solano

1763

1 think about the charges in this case, she's going to be not
2 guilty to those as well.

3 I'm not going to get into whether the thing actually
4 works in the United States. I'm not going to get into whether
5 all the pieces are there, whether even if it actually was
6 working you could actually intercept calls. Even Pete Myers,
7 he was the guy who owned the company, I asked him is there any
8 reason to believe this thing, this N-72 actually has all the
9 pieces inside? He says I never inspected it. I never took it
10 back to the lab. I offered to take it back to the lab, but I
11 never did. It appears to be, but I'm not sure.

12 Ladies and gentlemen, there's no way to believe in
13 any way that that is surveillance equipment even as it sits
14 there.

15 After the June 20th meeting, Arienne didn't have
16 that much to do in this case. She's really not involved in
17 this case because the next meeting is July 18th. Arienne is
18 not involved at all. Remember Arienne is in Ireland. Again,
19 because she's in Ireland, remember their position? Because
20 she's in Ireland that means she's guilty. The less she knows,
21 the more she's guilty. Just think about that reasonably.

22 There was one e-mail that I don't believe
23 Mr. D'Alessandro touched on. I will touch on it. Why? I
24 don't know if Mr. Fodeman, if he talks after this is going to
25 touch on it.

1 Let me talk about it. There's an e-mail on July 8th
2 that Arienne Irving sent to Fineman. It's an e-mail
3 explaining to Fineman where David Clarke is housed. The
4 e-mail actually says look, I called the facility. I got two
5 answers. One says you actually have to be on the list and the
6 other one says you can just show up with ID and get in, right?
7 I don't know what to do. So, Robert and I say go over there,
8 act dumb, see if you can get in. There's nothing wrong with
9 that. What would you suggest to somebody if you need to get
10 an answer and you have two separate answers? It's not like
11 the e-mail says we know you can't get in but go in there
12 anyway, right? Here's the most important part of this e-mail
13 that I want to show you. It's one of the last lines,
14 Government Exhibit 213.

15 Paragraph beginning on one of the last lines, if you
16 can't, you will have to approach David's mother and see if she
17 will contact him, meaning David Clarke, about putting you on
18 the list. Remember, this is after June 20th. This is after
19 -- this is the best example why Arienne Irving believed
20 David Clarke's mother was going to be important, not to kill
21 her, not to hurt her, but Fineman's suggestions way back on
22 May 13th I know his mother. I could go talk to him. These
23 are her words. See if that will get you on the list, not
24 ^ kill her killer, do anything, just see about the list.

25 Ladies and gentlemen, sending Fineman, sending him

Summation - Solano

1765

1 information about where a prisoner is housed is exactly what
2 she did with every other investigator. Look at the testimony
3 of Mr. Sessler. This is my cross-examination of him.
4 Remember Mr. Sessler was one of the investigators that worked
5 on this case. This is page 1051.

6 "Question: You don't recall whether or not she was
7 the one who was helping you locate or giving you information
8 regarding the whereabouts of this Mr. Bryant?

9 "ANSWER: It's quite possible. In the initial
10 assignment I was told Mr. Bryant was an inmate at the Broward
11 County jail and it may have come from her."

12 Again, every single thing that she is doing with
13 Fineman she has done with every other investigator in this
14 case, every other investigator she's ever dealt with and
15 ladies and gentlemen, I submit what associates do every single
16 day in this regard, absolutely nothing different.

17 This brings me, ladies and gentlemen, to July 30th.
18 Before I get to that, let me talk about one other thing. The
19 July 30th memo -- meeting -- Arienne is not in the meeting.
20 The government doesn't want you to know that. They don't ask
21 Fineman was she at the meeting? No. Remember, she's not at
22 the meeting. This is the meeting where she comes in at the
23 end. Again, it's another example of what her role is here.
24 Her role is just tell me where all the information is. Help
25 out with the investigation. Help out with the investigators.

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Summation - Solano

1766

1 This is where they're talking, I don't remember what
2 they're talking about -- oh, they're talking about going to
3 see Son, seeing all these things with Son. Remember after
4 this whole conversation occurs, there's an intercom and he
5 intercoms her and says remember that Son, what's that guy's
6 name? She says I don't know, I'll look it up on a memo.
7 Again, there's no conversation beforehand from him saying I've
8 just spoken to Fineman. We just discussed Son and give me the
9 information because I need it for particular reasons, right?

10 Then the government suggests to you because she went
11 to meet with Roger on the 24th, that somehow the meeting on
12 the 24th is reflective in some way regarding the meeting on
13 July 30th. Again, if Arienne Irving is involved in this case,
14 why wouldn't she be at the meeting? Why wouldn't she just be
15 at the meeting, tell Fineman to his face I spoke to Roger,
16 this is what Roger wants you to do. Why wouldn't that happen?
17 Again, what the government doesn't tell you, but remember the
18 direct examination of Mr. Simels, Mr. Simels visited him on
19 the 29th. Why don't they want to tell you that? Because they
20 don't have anything to tie her to this case. They don't have
21 anything that you can look at reasonably and say she must be
22 guilty. Ladies and gentlemen, that's all failure of proof
23 beyond a reasonable doubt.

24 Again, that July 30th meeting, she sent some
25 transcripts, you remember, to Paul? That's what the

1 government contends. Let's look at the Steve Sessler
2 cross-examination and see how it's no different than anything
3 she's ever done with any investigator. This is direct
4 examination by Mr. Shargel of Mr. Sessler, page 1061.

5 "QUESTION: Sir, in your interview with Mr. Bryant,
6 did you use any technique to get him to talk to you or want to
7 talk to you?"

8 I'm not going to read the whole thing. He's talking
9 about showing somebody transcripts. On line six, in other
10 words, transcripts the government gave the defense that I got
11 from the defense in which Mr. Bryant's phone conversations
12 were recorded with this Mr. Lilly who is supposed to be a
13 government witness. I did use that to show him, Mr. Lilly,
14 was talking to him and the possibility might exist, and I
15 didn't know whether it would or not, that would Mr. Lilly
16 possibly be a witness against you, too? This is a technique I
17 used to show the individual I have information, that I'm not
18 bluffing," and he goes on and on.

19 Why would Arienne Irving doing it many times before,
20 sending investigators transcripts before, why would she think
21 this is anything different? She wouldn't. She would think
22 this is exactly the same as every other investigator.

23 Remember after that meeting there's an e-mail they
24 put into evidence, government 216, Arienne Irving sending
25 Fineman an e-mail after the meeting saying Robert forgot to

Summation - Solano

1768

1 tell you something. He forgot to give you the information on
2 Son. He wants you to see if you can go down, speak to Son.
3 Mr. D'Alessandro says well, you know from speaking to Deb
4 Martin you're not supposed to be able to speak to this guy
5 because he has an attorney. That's actually not the case.

6 Let's look at Deb Martin's testimony. This is what
7 Arienne Irving believed. This is page 1042, direct
8 examination by Mr. Shargel, line 13.

9 "QUESTION: Tell us the rest of the conversation as
10 best you can recall it.

11 "ANSWER: As I said, I explained to him, him being
12 Son, what I wanted to talk to him about, and he said that
13 before he could be of any assistance, he would like to consult
14 with his own attorney and I said that would be fine. I handed
15 him my business card and I wrote Mr. Simels's name and number
16 on the back of my business card and gave it to him and he --
17 we thanked each other and he said he would let me know the
18 outcome of his conversation with his attorney. He will get
19 back to us."

20 He will get back to us, let us know the outcome of
21 his conversation with the attorney, that's what Arienne Irving
22 knew from May when Deb Martin went out to see this guy.

23 They talk about Mr. Simels, I knew from the attorney
24 he didn't want to speak to you. She wasn't in the meeting
25 when that was said. Why would she be responsible for knowing

Summation - Solano

1769

1 that? All she knows is her boss is asking her to send out
2 transcripts, to send out information to an investigator who
3 she believed and the only thing she knew is that this guy was
4 going to get back to them. Perhaps he got back to them.
5 Perhaps he said come talk to me. Again, you have to hold her
6 responsible for what she knew, ^ not what for what anybody
7 else knew.

8 Ladies and gentlemen, I'm almost done. I want to
9 talk to you about a couple of things. First, as the judge
10 told you, once I finish, Mr. Shargel is going to speak and the
11 government gets a second opportunity. I don't get to speak
12 after that. Perhaps you're happy I don't, but I don't get to
13 speak after that. What I ask you to do is this. Just don't
14 take whatever the government says at face value. Your job is
15 to test that. Your job is to see whether or not that actually
16 makes sense. Remember just like the June 13th memo, now you
17 know it doesn't make sense, but you hear the allegation and
18 it's crafted in a special way, in a nice way to get you
19 confused? Test it. Certainly I might have forgot to talk
20 about it or I didn't think about it. Just test it. Say to
21 yourselves if I was representing Arienne Irving, what question
22 would I ask myself? How would I go about this piece of
23 evidence? How would I test it? Remember, they have the
24 burden of proof beyond a reasonable doubt.

25 Perhaps Mr. D'Alessandro, Mr. Fodeman, whoever is

1 going to address you next talked about some transcript I might
2 have forgotten. Again, test it, ladies and gentlemen. Think
3 about it with the premise that Arienne Irving believed that
4 Fineman was nothing more than an investigator because if you
5 do that, they don't prove their case beyond a reasonable
6 doubt.

7 I could go through every single piece of paper in
8 this case. I think there must be 200 or 300 documents at the
9 least in this case, but I'm not going to go through all of
10 them.

11 Let me point out a couple. This is the exercise
12 that I want you to do in the event they think of something I
13 forget.

14 For example, look at this, Government Exhibit 807.
15 This is a memorandum from March 19th, 2008. Look at the last
16 line, Roger says we need to find Leslyn Camacho to get to
17 David Clarke. You see that, you say to yourself oh, it must
18 be bad. They need to get to Leslyn Camacho to get to David
19 Clarke. Remember, first, what this date was. March 19th.
20 They didn't even know where David Clarke was until March 27th.
21 In fact, in this same memorandum on the top, second page,
22 Roger said he heard from Paul that David Clarke was in
23 Switzerland. They don't even know where David Clarke is.
24 When you see this, you say wait a minute, is that bad? Of
25 course it's not. Of course it's not, ladies and gentlemen.

Summation - Solano

1771

1 The same thing, May 20th memo that talks about Son and of
2 ^ gloss has Letch Ledge, be careful if they're connected. If
3 the government knows it's connected, it could be bad for
4 Roger's case, nothing about threatening people, of doing
5 violence, corruptly persuading people.

6 The judge will explain the law in this case. The
7 first thing I want you to think about when the judge is
8 explaining the law, is that there are two separate trials
9 here. You've got to always remember that. Two separate
10 trials. What that means is that you have to evaluate the
11 evidence and the lack of evidence as to each, Mr. Simels and
12 Ms. Irving separately and come to separate decisions. That
13 means that one verdict does not rely on the other. Keep that
14 always in mind when you're deciding this case.

15 Second, the judge is going to talk to you about the
16 crime of conspiracy. He's going to tell you how many elements
17 there are, explain the elements. The element I want you to
18 take particular note of is the element of membership. The
19 government has to prove beyond a reasonable doubt that
20 Arienne Irving knowingly and intentionally entered into this
21 conspiracy. The judge is actually going to tell you that
22 being merely present is not enough. The judge is even going
23 to tell you other than merely being present, not enough, that
24 a conspiracy could actually be occurring. It could be
25 occurring and in fact Arienne Irving could be doing things to

1 advance that conspiracy and if she's doing it unknowingly,
2 she's not guilty. Listen to what the judge tells you about --
3 everything obviously -- but about that second element of
4 conspiracy.

5 To the specific counts and charges of these
6 witnesses, the judge is going to explain to you Arienne Irving
7 is not involved with this Ryan Pemberton count. In fact,
8 ladies and gentlemen, it doesn't matter. Just like the
9 conspiracy count, once you realize they haven't proven that
10 element beyond a reasonable doubt, I'm going to ask you to go
11 back there on the verdict sheet and check off not guilty.

12 When you get to the specific counts, I submit to you
13 if you want to make this easier based on the evidence, use
14 them as a whole. Because, again, I don't have any burden to
15 prove anything in this case, but if you believe in any way,
16 shape or form that Arienne Irving believed Fineman was an
17 investigator then there's no knowing or intentional mind set
18 of hers to attempt to corruptly persuade anyone, threaten
19 anyone or intimidate anyone. I ask you to take that group as
20 a block, go straight down, not guilty, not guilty, not guilty.

21 When you get to the equipment counts, that you have
22 here that I showed you beyond any doubt that it wasn't
23 surveillance equipment, certainly what she thought was coming
24 in, again, take a look at that importation count, checkoff not
25 guilty.

Summation - Solano

1773

1 Finally with the possession count, they're charging
2 her with possessing something she did not know was
3 surveillance equipment that's in her boss's office. Think
4 about that. She's responsible for possessing something in her
5 boss's office.

6 Ladies and gentlemen, again, for the reasons I told
7 you, they haven't proven that count beyond a reasonable doubt
8 and check off not guilty to that count. That's how simple it
9 is. That's how simple it is if you look at this and you
10 approach this logically. That's how simple it is.

11 I'm going to ask you to come back here through your
12 foreperson, Mr. Wallace, or whoever you choose, announce your
13 verdict of not guilty.

14 I'll leave you with this last thing before I sit
15 down. Thank you so much for the attention you've given me.
16 It's the same thing I left you with during opening statement.
17 The government doesn't have to prove motive. The judge will
18 not tell you, but the element of motive, it's something you
19 have every right to ask. You have a right to consider whether
20 or not Arienne Irving would have a motive to get in this case.
21 Remember, this is a 29-year old attorney at the time. Right
22 out of, essentially, law school, in the beginning of her
23 career. The government wants you to believe -- look how
24 ridiculous this chart looks. This is what the government
25 wants you to believe, she's conspiring with people that she's

Summation - Solano

1774

1 never met in her life, never spoken to in her life. This is
2 who she's conspiring with.

3 What equally doesn't make sense is if there was a
4 conspiracy, and I'm not saying there was, but if there was
5 one, Robert Simels, a veteran of 35 years, someone who doesn't
6 give her the responsibility of writing a legal memo or motion,
7 he's going to get her involved in a conspiracy is this that
8 doesn't make any sense because it didn't happen. That's why
9 it doesn't make any sense.

10 Finally in terms of why this motive, why would
11 Arienne Irving with absolutely nothing to gain in this case,
12 nothing to gain, all right, why would she get involved? She
13 has everything to lose if she gets involved. She's got her
14 career. She's got everything to lose. Why would she get
15 involved? It doesn't make sense to you when you look at the
16 evidence in this case, when you go back there, have that
17 feeling that something isn't right, it just doesn't fit,
18 that's reasonable doubt talking in your ear. That's why she's
19 not guilty.

20 I'm going to be sitting down in two seconds. I
21 can't do anything else. You now have the power to decide this
22 case. You alone have the power to find her not guilty. You
23 alone have the power to give her her career back. You alone
24 have the power to give her her life back. Thank you.

25 THE COURT: Thank you, Mr. Solano.

Summation - Shargel

1775

1 MR. SHARGEL: May it please the court, counsel on
2 both sides of the courtroom, ladies and gentlemen of the jury:

3 Before I even start my planned address to you, my
4 planned summation, I want to pick up on something that
5 Mr. Solano said towards the end of his closing argument. He
6 said to you, asked you when you deliberate, don't just take
7 what the government says at face value. As soon as he said
8 that, the moment he said that, a bell went off in my mind and
9 I started thinking about Government Exhibit 810 in evidence if
10 we could have it put up. This wasn't the biggest point in the
11 case. It's a letter unsigned that the government claims is to
12 call Rodrigues, starts my brother Paul, dated May 13th, 2007,
13 a full year before Fineman walks into Bob Simels's office and
14 this letter was put before you and, by the way, when
15 Mr. Simels was on the witness stand, not a question was asked
16 about the letter, not a single question, and it's now put
17 before you in summation, in evidence and Mr. D'Alessandro
18 reminds us it was taken from the server at the law office of
19 Bob Simels up on 90th Street.

20 You know what? There's not a drop of evidence in
21 this case, not a spec of evidence in this case that this
22 letter ever went to Guyana. There is not a drop of evidence
23 in this case that this letter ever went to Paul Rodrigues. It
24 was on the server at the Simels law office. One would think
25 if this were on the server at the Simels law office, how could

1 anyone be thinking there was a bad act in process and leave
2 the letter on the server? It makes no sense whatever. I
3 asked you, as Mr. Solano asked you, I emphasize what
4 Mr. Solano emphasized, you have hard work, I say with all
5 respect, is not behind you. Your hard work is ahead of you.
6 I ask you to look as Mr. Solano did very carefully at all this
7 evidence.

8 Let me start where I intended to start. Let me get
9 to it. You know, when I opened and this case, there was talk
10 about the Khan case would last three months. Here we have a
11 case that lasted now a day over two weeks and some days we
12 were off, but this case opened with the following proposition,
13 at least the proposition that I was putting before you when I
14 spoke to you in the opening statement. I said in my opening
15 statement that this case is about words, words spoken and
16 words recorded. I think now that the case has unfolded before
17 you, you will see, again, looking at the evidence, that it is
18 nothing more than words. Nothing happened.

19 Think about this for a moment. No witness was
20 bribed. No justice was obstructed. No person was
21 intimidated. No evidence was withheld, lost or destroyed. No
22 witness lied at any Khan trial or any trial of Roger Khan. No
23 crime was committed.

24 I want to call to mind something that Tony Ricco
25 said. I want to put it before you at the beginning. No one

1 challenged his qualifications as an expert on criminal law.
2 He wasn't here as a partisan. An expert is not really a
3 partisan. An expert gives his expert opinion, puts the
4 information that he's learned over the years before you.

5 He told you not everything is black and white and
6 cut and dry. A lawyer has discretion within limits that he
7 spoke about. The judge is going to tell you it's perfectly
8 proper for a defense lawyer to interview witnesses -- forget
9 proper. It's a defense lawyer's obligation. That includes
10 cooperating witnesses. That's not a right. That's a duty.

11 Look at what Tony Ricco said. I put this before you
12 at the beginning of my remarks because I think it's at the
13 heart of the case. I think it's at the heart of every single
14 thing that we've been talking about and all the evidence.

15 There's nothing wrong with areas and -- this is
16 Mr. Ricco's testimony -- with half the talk that you have in
17 jails because all of that is talk. The question becomes what
18 happens when you cross the line between talk and what you
19 ultimately are going to present in a courtroom. This is
20 unassailably true. There's nothing wrong with talking to the
21 potential defendant or potential witness about anything. You
22 end up talking to people about, oh, you heard about this
23 murder, that murder and you're talking about what happened ten
24 years ago and talking about the coke deals they did and didn't
25 do and how they spent their money in Puerto Rico and

Summation - Shargel

1778

1 prostitutes, you end up talking about all of this stuff and,
2 God forbid, listen to this, God forbid if those conversations
3 were ever recorded, you couldn't explain what you're doing
4 talking about this stuff. God forbid these conversations are
5 recorded because there's a lot of talk going on that you would
6 have difficulty explaining.

7 But ultimately, Mr. Ricco continues, the bottom
8 line, look is what the lawyer ultimately decides is going to
9 be presented in the courtroom and that investigation and what
10 that lawyer presents in the courtroom has to be within the
11 bounds of the law. It's what the court expects of the lawyers
12 from both the prosecution and the defense.

13 We'll be speaking about this at length, but there's
14 no question about the fact that these tapes were tough to
15 explain. There's no question about the fact. I put this
16 before you. I ask each and every one of you, have there been
17 this conversations in your lives, forget lawyers and client,
18 witnesses and investigators, have there been times when the
19 conversation had been recorded it would be difficult to
20 explain, not because it was criminal, not because it was
21 wrong, not because it went over any line, but just because if
22 the conversation were recorded it would be difficult to
23 explain? I'll echo one thing Mr. D'Alessandro said. The
24 lawyers don't stand before you, I'm not here, Mr. Solano
25 wasn't here and the government lawyers are not here to explain

Summation - Shargel

1779

1 the law. That's exclusively within Judge Gleeson's province.
2 We can argue and make arguments within the rules of law and if
3 there's anything that's inconsistent, I'll echo what
4 Mr. D'Alessandro said, anything inconsistent with what I'm
5 saying and what Judge Gleeson is saying, later or perhaps
6 tomorrow morning, of course, it's Judge Gleeson who rules the
7 courtroom.

8 I say all this because I would like to talk about
9 the details of this case. It is true and I don't think the
10 government will quarrel with the proposition that no crime is
11 actually committed and that's why the charges in this case are
12 predominantly conspiracy and contempt -- not contempt but
13 attempt, attempt to obstruct justice, attempted witness
14 tampering.

15 (Continued on next page.)
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SS

OCR

CM

CRR

CSR

Summations - Shargel

1780

1 MR. SHARGEL (Cont'd): But what I expect from the
2 Judge's instructions that you will come to learn that words,
3 sitting around and talking, words alone, even careless words,
4 do not amount to attempt to commit a crime. That is vitally
5 important. Listen carefully as Judge Gleeson gives you the law
6 on attempt and tells you I expect that it requires more than
7 talking. It requires a substantial step toward committing the
8 crime with intent to commit the crime. With intent to commit
9 the crime. A substantial step. Even the preparation even
10 preparation doesn't amount to attempt.

11 Vaughn claimed and he was engineering the
12 conversations. He was sprinkling those conversations. The
13 Judge told you at the beginning of his testimony that what he
14 says on the recorded conversations is not the evidence. It is
15 what Mr. Simels said on the recorded conversations. Because
16 Mr. Vaughn as a cooperator, knowing that that recorder was
17 turning, knowing that that recorder was on, knew full well the
18 direction that he wanted to take those conversations, and
19 that's why time and time again Mr. D'Alessandro in his
20 summation would point and say look at what Vaughn is saying,
21 look at what Vaughn is saying. Vaughn saying I'm going to by
22 cell phones with \$1,000. There was nothing unlawful about the
23 \$1,000. Doesn't do it. There has to be a substantial step
24 coupled with a showing beyond a reasonable doubt that
25 Mr. Simels had the intent to commit the offenses that are

Summations - Sharge1

1781

1 charged against him, and there's nothing in this case, there
2 is nothing in this case --what I'm going to do during the
3 course of this closing argument again and again, is show you
4 the reasons why there is nothing in this case to support the
5 proposition that Bob Simels had any attempt to commit a crime.
6 The law does not punish loose talk. Let me say it as plainly
7 as I can. The law does not punish words alone. Let me make it
8 plain. The law does not punish a lawyer who is lawfully with
9 boni fides doing his duty as a lawyer to protect his client.
10 There was to crime intended here.

11 The government they may have said it already and
12 they may say it again in their rebuttal summation. They may
13 say, well, you know, the only reason no crime was committed,
14 the only reason it is only an attempt because it Selwyn
15 Vaughn, he was a government cooperator. So, obviously,
16 everything was being monitored and obviously, no crime would
17 have been committed, but you know, if you take a closer look
18 because there is plenty in this record to support the
19 proposition that I'm putting before you. If you take a closer
20 look, the evidence, the suggestion that Bob Simels had a
21 criminal intent is exquisitely refuted.

22 There is another government witness. I want to talk
23 to you about him now. His name -- actually he is a guy who had
24 many names. You heard about him several times during the
25 trial. One was Nigel Rodney. I think, perhaps, Nigel Rodney

Summations - Shargel

1782

1 is perhaps his real name. He was also known as Sherwin Lilly
2 and Sharwin Lilly and a bunch of other names. He had multiple
3 name and he was a cooperator in this case. And by the way,
4 you may recall there was a photograph of this equipment at
5 Bob Simels law office. There was notebook, a binder, that
6 said Lilly wiretaps. That was in the picture, and we made
7 clear it had nothing to do with the wire tapping equipment.
8 These are wiretaps that were supplied by the government in the
9 Khan case. They were turned over and in what we call
10 discovery. Mr. Simels got those from the government, but he
11 was a cooperating witness with the government, and there's
12 very little discussion, by the way. There's very little
13 discussion about Nigel Rodney or Sharwin Lilly on the recorded
14 conversations. And even our form of Nigel Rodney, even though
15 Nigel Rodney was a cooperator Selwyn Vaughn was given no
16 assignment, no request that he find where Nigel Rodney was.
17 Selwyn Vaughn's help was not sought, but you know what is
18 great about this. You know why I bring up my Nigel Rodney
19 whose name was barely mentioned even by the prosecutor in his
20 closing --Mr. D'Alessandro's closing? Because Nigel Rodney is
21 like a natural experiment. Because if I'm arguing to you that
22 Mr. Simels did not intend to violate the law or commit a
23 crime, where can we look to support that? So I say let's look
24 at Nigel Rodney because Nigel Rodney is an actual natural
25 experiment and I say it for this reason.

Summations - Sharge1

1783

1 Here's the question. Here is the question with Nigel
2 Rodney what -- this is the experiment -- what would Bob Simels
3 do if he got the opportunity to talk to a government witness?
4 You've heard again and again, and again, and again that
5 Bob Simels said whether he was in Guyana or whether he was in
6 New York I want the talk to Clarke, I want to talk to this
7 one, I want to talk to that one, I want to talk to these
8 people. Well, here is the perfect example. He goes out and he
9 meets with Nigel Rodney. The question is in my suggestion
10 that it's a natural experiment is that would he intimidate?
11 Would Bob Simels threaten? Would he attempt to corruptly
12 persuade? Would he do any of the things with which he is
13 charged?

14 Well, here's what we know. Mr. Simels did go to one
15 of the local federal jails in Brooklyn to interview
16 Nigel Rodney and he went twice with Arienne Irving and Arienne
17 Irving went three more times for a total of five times. There
18 is no allegation in this case that Bob Simels lied to get into
19 the jail to see Nigel Rodney. He wasn't his client but he
20 went to a jail and again, not once but twice and Arienne
21 Irving went five times and there was no suggestion that they
22 misrepresented themselves as to who they were.

23 The law permits, as I said a moment ago and as you
24 will hear from Judge Gleeson, the interview of Nigel Rodney.
25 There was no notice to his lawyer, nothing in the record about

Summations - Sharge1

1784

1 notice to his lawyer.

2 And let us look at the memo, Defense Exhibit 306 A.
3 306A. The first paragraph, this is March 9, 2008 RMS Robert
4 Simels: And I met with Lilly. He was advised that he did not
5 have to meet with us, and that he was free to leave at any
6 time. He agreed to listen and to talk to us about his
7 involvement in Roger's prosecution -- as he was free to do,
8 as was proper, perfectly appropriate. And not only would he
9 talk to them, once he talked to them five times. He didn't
10 have to speak. And in those five times -- and keep in mind
11 that Nigel Rodney is a government cooperator -- there was no
12 attempt to obstruct. Nothing about Nigel Rodney is charged or
13 alleged in this indictment. And Nigel Rodney, I'll remind you
14 once more, is a government cooperator. If something were
15 untoward, if something were wrong, if something criminal
16 happened in those meetings, don't you think you would have
17 heard from Nigel Rodney and you didn't. Natural experiment.

18 And as Mr. Simels testified, and as Arienne's memo
19 showed over and over again, the lawyers obtained valuable
20 information in connection with the Khan case leading to a
21 government concession on September 4, 2008 that there was
22 another short man.

23 You saw all the letters that Mr. Simels wrote to the
24 government acting responsibly as a lawyer, saying we know you
25 have information about another short man. The indictment was

Summations - Sharge1

1785

1 brought -- United States against Shaeed Roger Khan, aka, short
2 man and after Mr. Simels pressed and pressed and pressed it
3 was revealed that there was another short man in the case.

4 You remember on May 13th when -- I'll be speaking
5 about this at length, but you remember on May 13th with Selwyn
6 Vaughn shows up at the Simels law office and Mr. Simels is
7 asking him questions about other short men who were not only
8 short men -- not short men in Guyana, but short men who were
9 selling drugs and exporting drugs to the United States and he
10 is being present because Selwyn Vaughn said over and over
11 again this is the only short man that I know of in our group.
12 Essentially he wasn't even allowing the possibility that other
13 short men existed, but you saw that Mr. Simels and Ms. Irving
14 were able to get favorable information from Nigel Rodney at
15 the MCC.

16 So Mr. Simels passed that test and there wasn't a
17 moment when anyone suggested that he had done something wrong
18 but you know something, with any experiment, its value lies in
19 the proposition or the question of whether it could be
20 duplicated and here again, it was duplicated. What would
21 happen if Robert Simels -- if Bob Simels had got to talk to
22 one of the cooperators in the case? What if Bob Simels got to
23 actually sit down and speak to a David Clarke or any one of
24 the others Alicia Jagnarain or any one of the others who were
25 witnesses in the case? What would happen?

Summations - Shargel

1786

1 Peter Headley was a prisoner in Ohio in a federal
2 prison, and Peter Headley was a cooperator with the
3 government, and Peter Headley was somebody that Bob Simels was
4 interested in seeing. So what did he do? He sent Frank
5 Gonzales -- Frank Gonzales, one of the private investigators
6 on the case, to visit Headley in prison in Ohio, and at that
7 prison, because a jail is different than a prison. A jail is,
8 as you heard from the testimony, holds pretrial detainees and
9 a prison is where people who are sentenced go to serve their
10 terms. In that prison it was required -- and this is
11 important to note for later -- it was required that permission
12 be obtained to visit Peter Headley, and permission was
13 necessary to visit Peter Headley and Frank Gonzales supervised
14 by Mr. Simels obtained that permission, and he visited Peter
15 Headley in that jail. And he obtained information that was
16 helpful to Roger Khan. He did what lawyers and investigators
17 are supposed to do. He fulfilled his responsibility to the
18 client, and let me show you -- let me show you on the screen
19 DX -- Defendant's Exhibit S-303. This is a redacted -- you
20 will recall there were a number of exhibits that came in
21 during the trial that was agreed upon after a ruling by the
22 Judge that it would be redacted. Mr. Gonzales says: Upon my
23 arrival I identified myself and mentioned the purpose for my
24 visit. Mr. Headley stated that he was expecting me pursuant to
25 a letter from the law offices of Robert Simels, Esquire and

Summations - Shargel

1787

1 had no objections in speak -- apparently a typo -- in speaking
2 to me or with me. And then it goes on.

3 In response to my questions he stated the following:
4 He has heard that Roger Khan is also called short man but has
5 only heard him referred to as boss man because he was their
6 employer. However, the short man referred to in the ledgers
7 belonging to David is him (Headley) and it goes on.

8 Mr. Headley concluded his comments by stating that
9 none of these people, including Richard and Delvan Adams know
10 Roger Khan and in all his dealings with David's drug
11 organization, both in Guyana and New York, he has never seen
12 or heard of anyone dealing with Roger Khan. He concludes that
13 they are all lying in order to avoid a heavy prison sentence.

14 Bob Simels didn't know Peter Headley. Peter
15 Headley's name came up and Bob Simels did what he was required
16 to do. He sent an investigator out to see Peter Headley and
17 got information like that. Similarly, in the memos that are in
18 evidence, you can see them, similarly with Nigel Rodney there
19 was information as valuable, if not more valuable, than that
20 which appears on the screen. Bob Simels was providing bonafide
21 legal and lawful representation to Roger Khan as he was
22 required to do.

23 There was no charge of witness tampering with Peter
24 Headley, there was no obstruction charge, there was no crime
25 intended, there was no crime committed.

Summations - Sharge1

1788

1 He went to a Ohio. Bob Simels travelled himself to
2 Ohio to confirm this information. It was a natural experiment,
3 meaning it wasn't intended to be an experiment, but as we look
4 back on it, we can see it was a natural experiment because in
5 both of these cases at a time when the government's claiming
6 that Bob Simels was up to no good, when Fineman was not in
7 this picture talking as he was on those days in the summer,
8 spring and summer of 2008, when Bob Simels went and
9 interviewed and sat with these witnesses whether through an
10 investigator or himself, no law was violated. Only legal
11 representation occurred.

12 And who were these investigators? Who were these
13 investigators? I think that Mr. Solano mentioned something
14 about this. Frank Gonzales, they just mentioned him. He is now
15 a United States marshal right in this building. A United
16 States marshal in this building. Deborah Martin 26 years FBI
17 agent. Lee Denney, North Carolina investigator with 35 years
18 experience and Steve Sessler (ph) the former Miami homicide
19 detective. We didn't bring in everyone of the investigators.
20 You heard name after name after name, it is true. We didn't
21 bring every one of them in, but this representative group
22 establishes that this was not some criminal scheme or some
23 criminal plot that Bob Simels engaged in. The investigators
24 that came before you, telling of their experience, their
25 qualifications, their bona fides, that is established that

Summations - Sharge1

1789

1 this was an investigation that was done in accordance with
2 proper legal and perfectly appropriate representation.

3 Now, I'll tell you this. Has the proof in this case
4 shown that Bob Simels is an aggressive defense lawyer?

5 Absolutely. I don't think a client would want anything less.

6 Does the evidence establish that Bob Simels worked very hard,
7 spending long lonely nights at his computer, hammering out
8 those lists of things to do and people to see? You saw
9 records that were created long before this case came about
10 that showed that Bob Simels and Arienne Irving had worked some
11 more than 3700 hours on this case between the time of their
12 retainer in August of 2006 until the arrest in September of
13 2008.

14 You heard evidence that Bob Simels travelled to only
15 distance places, risking his own safety to develop facts
16 favorable to his client. Four trips to Guyana. Was he
17 dedicated to his client? Absolutely. But despite all that
18 hard work, despite all the diligence, and despite all the
19 commitment, Mr. Simels is cast here in such a bad way.

20 This has to be the most cynical piece of evidence,
21 the most cynical piece of evidence that was received in this
22 case. The fact that Bob Simels and Arienne Irving, you see
23 them in the courtroom, but it was necessary for the government
24 -- what was the message here? You are who you represent?
25 There's no such thing in the law.

Summations - Shargel

1790

1 What was the message that the government had in mind
2 by putting Robert Simels and Arienne Irving together with the
3 other people who they now say are guilty of the worst offenses
4 of drug trafficking and mayhem and violence, violence, drug
5 gang, and the lawyers? And what's the point? That these
6 lawyers -- that Robert Simels -- I'll talk about Bob Simels --
7 that he's so low that he would represent people like this? Is
8 that the point? Or what you heard which is almost just as
9 cynical, what you heard earlier today, a phone list that
10 anyone would prepare in any business contact information for
11 anyone involved in the case and now the government takes this
12 contact information and they put it up on the screen and they
13 say the contact information shows that he knows these people
14 because he's intimately involved with them and he knows that
15 Paul Rodriguez and Sean Bellfield and all these people,
16 Fudgey, he knows that they are killers. It didn't matter how
17 they presented themselves, and look at the fact that one of
18 the entries on the address book or was silent assassin,
19 someone else choose as an e-mail address and Bob Simels, a
20 former police officer by the way, Bob Simels is supposed to
21 say -- what is he supposed to say? Hold on. Let me interrupt.
22 What is he supposed to say? Is he supposed to say, Fudgey a
23 silent assassin, Appolo (ph) short man, fat man, whoa, I
24 better not get too involved in this case. I know I have a
25 constitutional duty to represent a client but this is no white

Summations - Sharge1

1791

1 collar case. If this is a white collar case I will just go
2 out and visit and interview the law. If it's a case like
3 this, all bets are off? Is that the message? I wouldn't I
4 think so.

5 I'll say this to you, ladies and gentlemen. You may
6 you may despise narcotics trafficking, you may loathe the
7 violence that you heard about, but what's suggested by that
8 exhibit is that the lawyer is one of them, that the government
9 sees the gangsters as they portray them and the lawyer is one
10 of them. Look at the fact. Look at the significance they
11 argue of having their phone numbers and contact information
12 and imagine that the lawyers had phone numbers and contact
13 information for people who had knowledge about the case, who
14 were associated or colleagues or by whatever description
15 connected to their client, making trips to Guyana where he had
16 to arrange those trips with people in Guyana and having those
17 phone numbers. Oh, that's such a bad thing because it was put
18 before you this morning like it was just that. Such a bad
19 thing. There's no such thing as you are who you represent.

20 You know, this investigation had an unbelievable
21 start. Unbelievable start. It goes to the GO prison in Queens
22 and I want to talk about that now because that's the beginning
23 of the investigation, and that's the point that the
24 investigator Mazzella said this is when it all started. This
25 was the investigation of Robert Simels and if you look at the

Summations - Sharge1

1792

1 testimony -- I'm not going to put it up on the screen, but I
2 assure you it is there, that the investigation of Robert
3 Simels and Arienne Irving began with the GO prison, and what
4 happened there. Like, what? Arienne Irving, how did her
5 investigation start.

6 It started with a mindset and listen to this and how
7 wrong-headed this whole business is about the GO prison. Well,
8 it was claimed on March 27th -- let me put the claim in focus
9 -- March 27, 2008 -- this is before Fineman has his first
10 meeting with them. The incident -- the incident I'll call it
11 the incident, like the incident at Black Rock, the incident at
12 the Queens jail and the claim is that Bob Simels lied to
13 Nicole Wait to gain entry and interview David Clarke.
14 Perfectly proper to interview David Clarke. Let me remind you
15 an interview, by the way, that never took place.

16 Clarke comes down. Simels said I'm Bob Simels,
17 Kahn's lawyer. Clarke says I don't want to speak you. Simels
18 says okay. Not another word than okay. He leaves the jail and
19 Clarke goes back to his cell. Oh, wow. What temerity at this
20 time on the part of Bob Simels to go to the Queens jail.

21 Let's talk about the charge. Let's talk about the
22 charge. Count Eleven. You will hear about that when the Judge
23 gives you instructions. He lied by saying he is a lawyer for
24 David Clarke. Now, first question. Why on earth would he do
25 that? Why would he lie about whether he was the lawyer for

Summations - Sharge1

1793

1 David Clarke? Nicole Waite, the corrections officer, said if
2 you're not the attorney for the inmate you need to get
3 permission of the warden, and she said she never knew of a
4 lawyer who was not let in. So all you had to do was write a
5 letter.

6 Well, you know, it was necessary for him to write a
7 letter -- for Bob Simels to write a letter to have Steve
8 Sessler, one of the investigators in Miami Dade jail down in
9 that Florida, remember that? So what did they do. Make up a
10 pack of lies? No. Bob Simels wrote the letter and as
11 Mr. Sessler told you -- as former homicide detective Sessler
12 told you two days later they had the permission, two days
13 later he was doing the interview in the prison.

14 Gonzales, as I say earlier, needed permission to
15 visit the Ohio prison, he wrote the letter and he got the
16 permission.

17 Why would you need to keep this in mind? The GO
18 prison, as they call it, is a private prison under contract
19 with the Department of Justice. The owners of the prison are
20 in it for a profit, and like any contractor with the United
21 States, if they underperform, they can lose the contract. So
22 it's in this context -- this is not like Lieutenant Rodriguez
23 from the federally operated jail, MCC in lower Manhattan at
24 150 Park Row. This is a private business. So the interview
25 -- the events on March -- the incident is on March 27, 2008,

Summations - Shargel

1794

1 and the interview is on April 1st, 2008, but listen to this.
2 Who's on the line. Who's on the extension phone when the
3 interview is taking place? There an investigator. There's an
4 assistant United States attorney, and there's also Ms. Waite's
5 boss, the warden of the prison is on the extension phone. I
6 suggest to you, ladies and gentlemen, that that is not a very
7 smart or fair way to interview an employee on the question of
8 whether the employee acted in accordance with supposed -- and
9 I'll tell you in a second why I say supposed -- acted in
10 accordance with supposed regulation. If the investigators were
11 interested in getting at the truth don't you think that they
12 would have had the interview with Ms. Waite without her boss
13 on the telephone?

14 So Ms. Waite says she was covering, and she said
15 this here in court. I am not suggesting in any way that she
16 is a bad person. She remembers this is how it happened. She
17 was replacing someone on a 30 minute lunch break. She doesn't
18 ordinarily sit in the front but she was there and she said she
19 complied with the procedures, and I said "supposed procedures"
20 before because Mr. Rodriguez from the MCC told you that not
21 only at the MCC, the local federal jail in Manhattan, but in
22 every local federal jail in the United States the visiting
23 lawyer doesn't have to be the attorney for the inmate. The
24 Title 18 -- we had that Title 18 form up there, the form
25 that's used in every jail, the Department of Justice that was

Summations - Sharge1

1795

1 referred to as the Title 18 form, that form doesn't ask a
2 word -- lots of questions there but there's not a word about
3 whether the person that you are visiting is your client. It
4 just says what's the name of the inmate that you are visiting.
5 If it wasn't material for the United States Department of
6 Justice to know, if they didn't put down are you visiting your
7 client or are you visiting someone else, if they didn't say
8 you need permission of the warden, one of the elements of this
9 offense -- one of the ingredients, as Judge Gleeson called it,
10 that they will discuss the materiality, was this a material or
11 important -- I am not defining material, the Judge will -- but
12 was this an important or material statement that was being
13 made at this time? I respectfully submit, that Ms. Waite was
14 under pressure to remember that Simels had said that David
15 Clarke was the client.

16 Prosecutors can argue, well, you can rely on her
17 account of what occurred but this is the same woman, and I am
18 not suggesting for a moment that it wasn't -- Mr. Simels was
19 not there. He signed it. There is no question about the fact
20 that he presented identification, but was her recollection so
21 clear that she recalled that the lawyer who was Mr. Simels was
22 short and blond? I think that is something that you could
23 fairly take into account in thinking about what occurred that
24 day and what her recollection was. But here's something else.
25 Remember that she said that she wrote a report. Apparently

Summations - Shargel

1796

1 duty requires that you write a report and that she wrote a
2 report and that there were two copies of the report. One copy
3 she kept, this was her testimony, and one copy, I suppose it
4 was the procedure, went to the tour commander and by some
5 colossal coincidence -- by some colossal coincidence both
6 copies are now missing. Both copies of the contemporaneous or
7 nearly contemporaneous reports are now missing. Colossal
8 coincidence. And here's something else. The records they kept
9 at this GO facility -- I don't know whose monitoring their
10 activities but remember David Clarke's visiting list?
11 Remember visitors have to be checked and vetted. You heard
12 testimony about that, and David Clarke on the same day has two
13 wives, and puts down on his visiting form that there are two
14 spouses. Well, who is doing the checking?

15 And speaking of the checking, I don't even know if
16 they have computers in the place because every record we saw
17 from the place is on paper, but speaking of the checking,
18 remember, Bob Simels was not alone that day. He was with the
19 investigator. This investigator was Lawrence Frost. Mention
20 him again later. His name was right below Bob Simels on the
21 sign-in form. Lawrence Frost, private investigator, licensed,
22 his number. And I said to Ms. Waite, isn't there a list.
23 Unlike lawyers with investigators, don't investigators have to
24 be on an approved list? And yes, the investigators have to be
25 on an approved list. Well, did you do any checking that day

Summations - Sharge1

1797

1 to see whether Lawrence Frost was an approved investigator?
2 And the answer was, well, I didn't have the list available to
3 me.

4 And ladies and gentlemen, there is no other word to
5 describe it. This charge of lying to the corrections officer,
6 no motive to lie, insufficient proof of the lies, this charge
7 is ridiculous. It doesn't seem stop there.

8 We called the defense witness. Mr. Simels called
9 the defense witness. The young defense lawyer Edward Sapone
10 (ph) and now you can't trust these tricky defense lawyers
11 because now he's a liar, too.

12 Now, Mr. D'Alessandro -- when Mr. Fodeman was doing
13 the cross-examination he started off with: So you said
14 something to the corrections officer that wasn't really true
15 when she asked what's your client's name, for about four
16 seconds and then he clarified the situation for about four
17 seconds. And so that was by Mr. Fodeman, sir that really
18 wasn't true. And Mr. Sapone said, yeah, I knew what I was
19 there for. I cleared it up. And then now Mr. D'Alessandro is
20 elevated it wasn't really true to Mr. Sapone came in here and
21 lied to -- he told a lie to the corrections officer.

22 (Continued on next page)
23
24
25

Summation - Shargel

1798

1 MR. SHARGEL: (Continuing)

2 He was simply trying to find out for our benefit and
3 your benefit what's the real deal at this -- at this facility.

4 So what is the story here? Defense lawyers can't be
5 trusted? Is that the subtext?

6 And I think this would be a perfect time, unless the
7 judge believes that this is a perfect time, for a break?

8 THE COURT: Would you like a break?

9 MR. SHARGEL: No. I am fine. I thought -- this was
10 a good time for me to break.

11 THE COURT: Let's break.

12 MR. SHARGEL: Okay.

13 THE COURT: Don't discuss the case.

14 All rise.

15 (The following occurred in the absence of the jury.)

16 THE COURT: I thought you were turning to me to
17 answer the question.

18 All right.

19 (Recess taken.)

20 (After recess.)

21 (The following occurred in the absence of the jury.)

22 Seat the jury, please.

23 You can be seated until the jury comes in. But then
24 please rise.

25 MR. FODEMAN: I'm still going today, right, Judge?

Summation - Shargel

1799

1 THE COURT: That's the plan.

2 I just poked my head in to ask them if they can go
3 as late as 5:30. They said yes.

4 Can you estimate when are going to be done?

5 MR. SHARGEL: I said between 90 minutes and
6 two hours. I will try to keep it closer to 90 minutes.

7 THE COURT: I would like to finish this up.

8 MR. SHARGEL: I would also.

9 THE COURT: We got a late start today.

10 All right.

11 MR. SHARGEL: What time would I need to be done?

12 THE COURT: There is some grumbling in there.

13 How long do you expect to be?

14 MR. FODEMAN: I have a half hour's stuff. I
15 haven't heard Mr. Shargel's stuff. I think probably
16 45 minutes.

17 THE COURT: You took three hours this morning.

18 MR. FODEMAN: Fair enough.

19 THE COURT: If we finish by a quarter of or so, I
20 think that will be fine. We will take a short break.

21 MR. SHARGEL: I am going to --

22 THE COURT: I don't want to curtail what you are
23 doing. I can't keep them past 5:30. If we have to
24 finish --

25 MR. SHARGEL: Can I do this? Can I save 30 minutes

Summation - Shargel

1800

1 until tomorrow morning? We have done that.

2 THE COURT: Do you know when you are going to be
3 done?

4 MR. SHARGEL: Judge, I am at page nine of 31 pages
5 of notes.

6 THE COURT: How long have you been going?

7 MR. SHARGEL: Thirty-five minutes.

8 THE COURT: Why don't we play it by ear.

9 MR. SHARGEL: I don't want to say it again. To save
10 a half hour, that might require 4:30, quarter to 5:00 break.

11 THE COURT: Understood.

12 MR. SHARGEL: We will play it by ear.

13 THE COURT: Yes.

14 (Jury present.)

15 THE COURT: Please be seated, everyone.

16 MR. SHARGEL: I said to you before the break, and I
17 measure my words, that the -- the charge of -- about the GO
18 prison and lying to the correction officers is nothing short
19 of ridiculous.

20 I want to say going on, that this charge with
21 respect to the eavesdropping equipment, is even worse as you
22 may find. I'll tell you why one could say that's worse.

23 First of all, let's review the facts very, very
24 quickly. Sometimes I know that perhaps we go too quickly.
25 But let me review these facts.

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Summation - Shargel

1801

1 Before Bob Simels ever meets Roger Khan, before he's
2 retained, back in the period 2002 to 2004, you might recall
3 that Khan was arrested in early 06. Maybe even went further
4 than that.

5 Somehow Khan under the sponsorship of a government
6 official in Guyana purchases this -- purchases this
7 eavesdropping equipment. You heard about the political and
8 cultural divide. It's a violent divide. You heard, and I
9 think it will become pertinent later, about the fact that Khan
10 had recorded conversations. He wasn't the one that was
11 physically operating the equipment. But you heard on the
12 recordings or in other documents that other people were doing
13 this.

14 Khan tells Simels, there is no question about it,
15 Roger Khan told Simels after he was retained that in fact
16 there are conversations, Khan was pushing the idea all along,
17 you have heard about this, that it's so unlikely that he would
18 be conspiring with David Clarke because David Clarke was on
19 the other side of this difficult, this civil unrest in Guyana
20 and made no sense that they were in bed together selling drugs
21 to -- and exporting drugs to the United States.

22 So with that in mind, Khan tells Bob Simels, I don't
23 think there is any disagreement about this, that there is
24 valuable information, to support what I am telling you, to
25 support my innocence, my claim of innocence, there is valuable

1 information in these recorded conversations and Bob Simels is
2 informed that they exist.

3 When he goes to October -- I'm sorry. When he goes
4 to Guyana in October of 2007, he inquires about the equipment.
5 What he gets, no question about it, are these two laptops.
6 They are Panasonic Tough books, one larger than the other.
7 But the two Panasonic Tough Books.

8 As the man from Smith Myers, Mr. Myers told you, the
9 laptops can't record anything. They can only be used in
10 conjunction with other equipment. They are not recording
11 devices. They don't intercept conversations.

12 So Mr. Simels takes -- has shipped, he
13 didn't -- pretty heavy. He didn't carry them back to the
14 United States but he had them Fed Exed back to the United
15 States.

16 Ultimately, he was able to get into one laptop, the
17 larger one, bypass a security code, a password, and they got
18 in there and lo and behold, it was as Khan described, that
19 there were conversations on the laptop.

20 At a later time Khan tells him you should check the
21 smaller laptop also because this has even more conversations
22 or as many conversations with Khan -- with Clarke and those
23 conversations would be helpful for the defense.

24 Now, when Mr. Simels was able to see the
25 conversations and listen to the conversations, he had all that

Summation - Shargel

1803

1 he needed. This wasn't going to help the situation. This was
2 for court, and this was for court, the larger and the smaller
3 laptops.

4 He didn't need anything more. He didn't need bases,
5 power supplies, antennas, dishes. He didn't need anything.
6 He had the evidence, just like you see evidence that comes in
7 before you. He had the evidence to put before the jury.

8 In 2008, Judge Irizarry, who is the judge on the
9 Khan case, in this courthouse, said that, in effect, if you
10 are going to use tapes at trial, you must turn them over to
11 the government. It works both ways. The government if they
12 were going to use tapes -- they turned over the Lilly wiretaps
13 and other recordings. If they were going to use tapes they
14 had to turn them over. The defense had a parallel commitment,
15 to turn over any tapes it had to the prosecution.

16 As you saw, the defense, and there were no secrets
17 about this, this was in open court. Anyone could walk in,
18 like the people walked in here, and watched these proceedings.
19 Turn it over.

20 On March the 14, there was a letter, I think you
21 only saw it the other day, you will recall, on March the 14th,
22 there was a letter, 2008, Mr. Simels writes to the government
23 and says here are four CDs and here are the conversations.
24 Complying with judge Irizarry's order. Here it is.

25 Bob Simels is acting like a lawyer, representing his

Summation - Shargel

1804

1 client in the courtroom; no secrets, no skullduggery, nothing.

2 And then the government started -- started raising
3 questions about the equipment, and they sent to Mr. Simels
4 letters. This is all a matter of public record. They
5 specifically asked for the original recordings and they asked
6 the question, well, let's see it.

7 This is defense Exhibit 308 C, it is page two.

8 Also, please describe how each of the recordings
9 were made, including the equipment used.

10 In addition, the government requests that a computer
11 expert inspect the original recordings at a mutually
12 convenient time.

13 So it was the government that was asking questions
14 about the equipment and this wasn't the last time they asked.
15 You saw -- I am not going to burden you with them now. I am
16 not going to burden the time that I have available to me. But
17 you saw that there were several letters. You could ask for
18 any exhibit and the exhibit -- any exhibit in evidence will be
19 sent back to you.

20 There were letters after letters, two, three more
21 letters, where the government said, we want this information.
22 We want to know about the equipment.

23 With all respect to Bob Simels and probably most of
24 the people in this courtroom, what Mr. Myers was explaining on
25 the witness stand was a little bit, I would suggest, over

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1 everyone's head. The radio waves go into this machine, he
2 said, and then the software and the laptops convert.

3 The bottom line is, that the lawyers in this case
4 wanted to make sure, Mr. Simels wanted to make sure that he
5 would be able to get the evidence admitted. You see this
6 happen. This is very interesting. It's a trial almost about
7 a trial.

8 You saw how lawyers offer evidence and the judge
9 rules as to whether it is admissible, whether there is a
10 proper foundation for the evidence and so on and so forth.

11 In this case, Mr. Simels didn't want to be stuck at
12 a trial and the judge said why didn't you ever show them the
13 equipment, why didn't you tell them about this equipment. And
14 Mr. Simels would stand there and the judge could very well
15 rule not admissible, not admissible.

16 So Mr. Simels then went and had Ms. Irving ask for
17 the base or the power supply. I don't know what he was asking
18 for. I can't even describe it to you myself.

19 But this machine comes up in June of 2008. And now
20 the charge is, the charge is that Mr. Simels wrongfully --
21 forget wrongfully -- criminally imported into the United
22 States and then possessed in the United States this equipment
23 in violation of law.

24 I say, absolutely not. I'll tell you why the answer
25 is absolutely not.

Summation - Shargel

1806

1 Simels, first, did not know or have reason to know,
2 the judge will describe the elements of the offense, that the
3 base was the device that actually recorded the conversations.
4 For all the reasons that Mr. Solano said, and I will not
5 repeat it, but you could see right on here. It says power,
6 office computers, power module. No one doing the search knew
7 what that piece of equipment was. That's number one.

8 And number two, the base, if that's -- if that's
9 what everyone is calling it, and if that's the equipment
10 Mr. Myers said was capable of recording conversations, the
11 essential part, the base when it was imported into the United
12 States, and I respectfully ask you to listen carefully to
13 those words, which are important words as you will hear Judge
14 Gleeson give you the law tomorrow.

15 When it was imported into the United States, at the
16 time that it came into the United States, in October of 2007,
17 it did not work. Mr. Myers told you that it doesn't work now
18 and there is no indication that it worked at the time that it
19 was brought in here.

20 No one is suggesting that Mr. Simels was in the
21 business or was attempting to wiretap anyone or record any
22 conversations. It wouldn't work here in the United States
23 because we are on a different telephone system. So it doesn't
24 work, at all events. It doesn't work because the equipment
25 itself doesn't work mechanically. And it doesn't work because

1 it can't capture conversations from the cell system that we
2 use in the United States and that we have used in the United
3 States for years.

4 So when the device was sent to the United States,
5 and the words are very important, its design did not render it
6 primarily useful to intercept conversations. Because the fact
7 is that it didn't work.

8 At the time that Mr. Simels had it in his law
9 office, the design of the device did not render it primarily
10 useful to intercept conversations.

11 In other words, our position, given what the law is
12 and what Judge Gleeson will tell you, is that it had to work
13 and for two reasons it didn't work.

14 So Mr. Simels had no knowledge that this was the
15 offending equipment. Mr. Simels did not have something that
16 was working at the time that it was imported into the United
17 States. And Mr. Simels did not have any -- it did not work.
18 When it was in his possession, in his law office, it did not
19 work, and, therefore, at that time, you will hear the judge's
20 words, at that time it was not primarily useful, did not -- to
21 render it capable or render it primarily useful to intercept
22 the conversations.

23 But here is what's -- here is what I said before
24 that this was worse than a situation with the jail. Here is
25 why.

Summation - Shargel

1808

1 Do you think that it's fair when you think about
2 this, and you will listen to the judge's instructions on the
3 law, but do you think it's fair that the prosecutors knowing
4 full well about these conversations, that the prosecutors in
5 the Khan case were pressing Mr. Simels to identify the
6 equipment and Mr. Simels in an effort to comply with demands
7 of the United States Attorney's office complied with those
8 demands and now he's being charged -- and now he's being
9 charged with possession and importation of the equipment that
10 they -- I don't mean the prosecutors at this table -- that
11 prosecutors in this office wanted to see?

12 Mr. Simels had that -- that equipment in his office
13 waiting for an order from the judge, an order that never came
14 directing him to physically turn it over to the government,
15 physically.

16 But the government lawyers knew that -- about this
17 investigation of Mr. Simels. And the -- and the government
18 lawyers knew from words that Mr. Simels spoke on the recorded
19 conversations, that the equipment was in his office and then
20 when they came in on September the 10th, 2008, to place
21 Mr. Simels under arrest, the equipment, great surprise, is in
22 the law office and that becomes the basis of Count Twelve and
23 Count Thirteen in this indictment.

24 Those are the charges. That is exactly what it is
25 about. And that's the situation, let me make clear,

Summation - Shargel

1809

1 Mr. Simels had no use for this whatever. There is nothing
2 that he could have done with this non-working, incapable piece
3 of equipment. He had no reason to have Arienne Irving email
4 or IM down to Guyana and say, get the base and send the base
5 because they want to inspect the original recordings and he
6 didn't know whether the original recordings were where. He
7 didn't even know what a base is, I think as he testified.

8 But there was no reason for him to have this. There
9 was no reason for this to be brought into the United States.
10 Other than -- if it didn't work before, it really is not going
11 to work (indicating).

12 But there was no reason other than the government's
13 demands. That's it.

14 That's charged as a crime because there is a certain
15 mindset in this courtroom.

16 Agent Mazzella told you that he has been working
17 19 years as an investigator but he never has seen it from the
18 criminal defense side.

19 The mindset of theirs is reflected in the
20 indictment, the charges in this case, and exact dates aren't
21 that important. But the indictment in this case charges a
22 conspiracy that started in August of 2006. Imagine that. The
23 conspiracy in this case is charged not from May 13th when
24 Selwyn Vaughn walks into the law office, not even from
25 March 27th when Bob Simels goes and tries to interview David

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Summation - Shargel

1810

1 Clarke at the jail, something that was totally appropriate,
2 not then, but when he first got retained by Roger Khan, when
3 he first was retained in August of 2006, that's when they say,
4 the conspiracy began.

5 May 13, 2008, when Selwyn Vaughn walked in with a --
6 walked into the Simels law office with a recorder hidden on
7 his body, sent in, sent in by the investigators to Bob
8 Simels's office with a recorder on his body, when there was, I
9 submit, not a whiff, not a scent, of misconduct in the air,
10 when there was no suggestion on earth that Bob Simels had done
11 anything wrong other than representing someone that the
12 government thought was bad, other than representing someone
13 that the government thought should be put in prison for the
14 rest of his natural life.

15 Khan suggested that Simels meet Vaughn and nothing
16 more. But apparently, that was enough for the prosecutors and
17 the investigators to open a window on a defense lawyer's
18 practice and kind of like peek in.

19 I tell you right now, and there is no question about
20 it, they didn't like what they saw. The recordings that Khan
21 made -- I'm sorry. Withdrawn.

22 The recordings that Vaughn made, let me emphasize,
23 they were lawful. The government is permitted to do that.

24 Selwyn Vaughn ultimately gets \$50,000, so far, for
25 what he's done here. That's perfectly lawful. The judge will

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1 tell you, doesn't violate the law in any way.

2 Selwyn Vaughn got, as Mr. Solano already pointed out
3 an S-visa, not only for himself but for his mother and his
4 three children and his wife. That's priceless, despite what
5 he said about wanting to go back to Guyana. That's priceless.
6 But it's legal and no one is quarreling with that proposition.
7 It is legal. The law allows that.

8 The law allows Vaughn to go into Mr. Simels's office
9 and pretend to lie and make up things, pretending to be a
10 loyal supporter of Mr. Simels's client, Roger Khan. He was
11 permitted to confuse and confound Robert Simels. That's
12 perfectly all right. The law allows that.

13 He even got immunity because you heard that before
14 he testified in front of you he sat on that chair and he said,
15 I refuse to answer any question put to me by Mr. D'Alessandro.
16 I refuse to answer. And he got immunity, meaning he can't be
17 prosecuted. His words can't be used against him and he's
18 covered for, I don't know what, but he's covered for his
19 testimony.

20 But the government is permitted to do this as well.
21 The government is permitted to do that.

22 There are other things that happened here that you
23 can consider in evaluating the government's case, and here is
24 one of them.

25 There is a conversation, I am not going to play it,

Summation - Shargel

1812

1 the hour is late, and I know it's easier to give these
2 summations than for you to listen to the summations. I
3 understand that full well. But this is serious business and I
4 ask you to please continue to pay attention, as you have.

5 There is something that you can consider. I won't
6 play the conversation but early on in April, do you remember
7 in April when Vaughn kept calling down to Guyana and said
8 heard the lawyer is looking for me, heard the lawyer is
9 looking for me. And if you really wanted to study those
10 conversations, people are saying who are you and who said the
11 lawyer is looking for you. He is trying to call people and
12 raise the idea that the lawyer is looking for me.

13 Vaughn is speaking to a person named Banks, the
14 nickname was Banks. No need for to you remember it. But you
15 could ask for it by name.

16 And Vaughn has a conversation. The conversation is
17 sprinkled with profanity and misogynist epithets but he said
18 in response to a question why do you talk like that. I talk
19 like that because that's how you talk to Banks. I am not
20 going to repeat them. You might recall that.

21 Here is what I would like to put on the screen
22 because here I think is the most important part.

23 Page 329 of the record.

24 What were you explaining during this conversation?

25 Answer: I was telling him that I got tired losing

Summation - Shargel

1813

1 money for them -- this is Banks -- he's telling Banks. Vaughn
2 telling Banks. Telling Martin -- that's really Saint Martin.
3 Do you remember he said he used the name Martin but it was
4 Saint Martin, the country. Saint Martin tired of losing
5 money, but that wasn't true. He said. That wasn't true.

6 Question: Why were you telling him this?

7 Answer: A conversation to see what else he may be
8 telling me what is going on down there.

9 Question: This is part of your role as an
10 informant?

11 Answer: Yes, sir. And they also had the impression
12 that I was working for a drug dealer.

13 First of all, before you even take that off, what
14 does he mean, the impression that he was working for a drug
15 dealer? If these are the people that he knew, if these were
16 people who were part of the conspiracy, if these were the
17 people who were part of Roger Khan's gang, I suppose he meant
18 that they didn't know that they were being recorded at the
19 time because now he's working as an informant.

20 But what he does say is that, in substance, that he
21 was keeping the conversation going to find out what's going on
22 down there.

23 Well, you know what, that makes sense. You do keep
24 a conversation going to find out what's going on down there.

25 But what's with this double standard? Why is that

1 good for Selwyn Vaughn and not good for Bob Simels?

2 The prosecutors in this case, not only during the
3 course of the trial, but even in the two or three hours that
4 Mr. D'Alessandro was before you this morning, the prosecutors
5 in this case are asking you to analyze and examine Bob
6 Simels's words in those conversations as if they were
7 analyzing a contract. Sifting those conversations to
8 offend -- to find offending conduct. Well, he said this here
9 and that there. Look what he said over here. And he -- and
10 Vaughn says that but doesn't deny it. Doesn't kick him out of
11 the office.

12 The fact is, that the idea of talking and talking
13 for the purpose of keeping the conversation going is not the
14 exclusive property of informants but it is -- as you heard
15 from Tony Ricco, it works for lawyers as well.

16 Do we have a page 1193 of the record? This is what
17 Tony Ricco said. Again, no one is quarreling with his
18 qualifications to say it.

19 We are talking about what happens when you have the
20 conclusions but you don't start with conclusions. He says, in
21 pertinent part, you listen to what people say and then you
22 spend time, efforts and energy to flesh it out. You never
23 know what you're going to get out of this stuff. Sometimes
24 you get a lot of junk and every once in awhile you get
25 something that becomes very important and valuable to both

1 sides of the case.

2 Let me tell you something. If you listen to these
3 tapes, as you have patiently listened to these tapes, that's
4 exactly what Bob Simels was doing. He was spending the time,
5 efforts and energy to find out what was going on.

6 There is something that Mr. Solano touched on for a
7 brief moment but I would like to explore it in greater depth
8 while still on this subject.

9 If Bob Simels, and I would ask you to think about
10 this, if Bob Simels saw Vaughn as a coconspirator, as a member
11 of this conspiracy that he joined, as a criminal who was going
12 to go out and do criminal things, as a corrupter of witnesses
13 who would go out and corrupt the witnesses in this case by all
14 matter and means, both legal and illegal, if that's what he
15 thought, ask yourselves this. Why all the questions that are
16 being put to Selwyn Vaughn? Why does Simels talk to Vaughn
17 hour after hour after hour? There are six, seven, eight hours
18 of conversation over the course of these meetings.

19 Simels is asking questions, Bob Simels is asking
20 questions like -- I have them here. Where did you grow up?

21 Tell me the story. I mean basically, without me
22 asking questions. In other words, without me prompting you,
23 this is what he's asking.

24 You could find this replete in every meeting.
25 Without me prompting you, you tell me what happened in your

Summation - Shargel

1816

1 own words. Come on, tell me what happened in your own words.
2 Tell me what happens over the course of time. When did you
3 hook up with Roger?

4 If they are in the same conspiracy together, and
5 this is Roger's henchman who is coming to do evil, why does he
6 have to ask questions like, when did you first hook up with
7 Roger? Is that some sort of idle curiosity on his part? Is
8 he a gossip or something that's particularly interested in the
9 details of their relationship?

10 And he says, did Roger commit the Allison murder?
11 You see, as Mr. Ricco pointed out to you, if a client says to
12 you, I didn't do this, you don't simply or blithely say okay.
13 It's your duty as a lawyer to check out the story. Because it
14 may be -- it may be appropriate later down the road to say, hey
15 buddy, you are kidding yourself. Maybe you should plead
16 guilty.

17 The lawyer has a duty to check the story. It's
18 exactly what was happening here.

19 Did Roger commit the Allison murder? He wanted to
20 know.

21 If Bob Simels knew everything, and if Bob Simels
22 deserves to have his picture in on that poster, wouldn't he
23 have known already? Why would he put the question? Was that
24 entertainment purposes?

25 And then he goes on. He goes further and says, did

1 Roger Khan ever admit or take credit for the murder? He's
2 putting the questions to him. For what reason other than that
3 he doesn't know.

4 Conversations with Selwyn Vaughn continued for two
5 reasons. One, because Simels was continuing -- continually,
6 and you will see this over and over again, trying to verify
7 the information that he got from the other people, from other
8 people.

9 He continuously says, I heard this from so and so.
10 I heard this from so and so. Is it true? Can you verify it?
11 Did this really happen?

12 It didn't matter whether Vaughn had no personal
13 knowledge, had personal knowledge, didn't have personal
14 knowledge. Bob Simels was willing to listen to him to see
15 what he knew about Guyana, what he heard about Guyana, even
16 what he read in the newspapers about Guyana. He wanted to
17 know what his case was all about, the contours and the details
18 so he wouldn't be surprised at a trial.

19 You can infer from everything you have seen here,
20 you can infer that lawyers don't like the notion of being
21 surprised. The government lawyers don't like it. Defense
22 lawyers don't like it. That's just the way it works.

23 Every case, you are only seeing ten percent of what
24 it is that the lawyers do. Because the preparation, the
25 investigation, is done beforehand. You have heard that from

1 the testimony.

2 So the first reason that Bob Simels was meeting with
3 Khan -- with Khan was to find out exactly what was going on
4 and get his version. That's what he said, he said, there was
5 one time when he got cut off. You might remember this. He
6 said sometimes Roger and then Vaughn cuts him off. He said I
7 want to hear your version. Then -- in other words, it's not
8 enough to have my client's version. It is not enough that my
9 client told me about it. I want to hear your version.

10 Why is he doing that? If Bob Simels is a
11 coconspirator of his? Why didn't he just simply say, here is
12 the list of witnesses. You have them. Just go off and do
13 your work. I have the addresses. I'll give you whatever
14 information we have. And go do your work.

15 Over and over again, he is asking and putting
16 questions, trying to verify and get more information.
17 Exactly, exactly what lawyers are supposed to do in the
18 representation of a client, as you have heard.

19 The second reason that, as the recordings themselves
20 show, is that Selwyn Vaughn, scripted and choreographed by
21 federal agents, was able to convince Simels that he offered
22 some legitimate value to the defense effort in the Khan case,
23 not as a witness, not as a witness, but as a person who was,
24 as Mr. Solano has already called to your attention, the find
25 man, F-I-N-D M-A-N. I will be your find man. I will be your

1 investigator.

2 There was no plan, there was never a plan to commit
3 perjury, for Selwyn Vaughn to have committed perjury at the
4 Khan trial because Selwyn Vaughn was never going to be a
5 witness at the Khan trial.

6 He was not soliciting, Bob Simels told you, he was
7 not soliciting or encouraging Vaughn to engage in criminal
8 conduct.

9 The thousand dollars, and I think this is clear to
10 you by now, because Judge Gleeson will tell you, that paying
11 for information is not criminal. Paying for information is
12 not criminal. The thousand dollars, and this is a case where
13 Vaughn gets close to \$500 from the government for parking.
14 Paying the expenses of someone in connection with -- that
15 someone supplying information -- I am not talking about
16 testifying. It is not illegal for a defense lawyer or the
17 defense team to do.

18 (Continued on next page.)

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Shargel-summation

1820

1 MR. SHARGEL: (Continuing) Let me add one other
2 thing. Let me put, again, on the board, I know it's been
3 there before, let me put on 3500 S 31. This is the memo
4 that's been referred to both in the government's summation and
5 Mr. Solano's summation, I believe. This is if memo that is
6 written to Mr. Simels and Darmuid White. You heard his name,
7 another lawyer in the case. There were no secrets here. Two
8 lawyers get this. It's dated January 18th, 2008.

9 Let's turn to the page where Fineman is. This is on
10 the fifth page after all sorts of names are mentioned,
11 Fineman, Paul has his last name, this is what according to
12 Khan, Fineman could testify to.

13 There is no suggestion in this entire memo that Khan
14 is making this up. Khan believes, apparently -- you know,
15 there was an instruction that Judge Gleeson gave you and I
16 want to call it to mind now. There are a number of documents,
17 not this one, but a number of documents which Judge Gleeson
18 said I'm admitting this but not for the truth of the content.
19 You remember those instructions? You probably heard it five
20 or more times, the idea being that it was admitted to show
21 what was on Mr. Simels's mind, not whether what Khan was
22 saying was true because Khan can't be here for
23 cross-examination. That's the instruction.

24 There is nothing in this document to suggest in any
25 way that it was what the government calls a script. Nothing.

Shargel-summation

1821

1 Bob Simels asked Fineman about this. Bob Simels asked Selwyn
2 Vaughn about this.

3 It's important to note that Fineman never ever told
4 Bob Simels the facts in here are wrong, that this is not true.
5 He told you that on the witness stand. He went line by line
6 in response to the prosecutor's questions, line by line saying
7 this is true but most of the rest of it is not true and I
8 think he said at one point only two percent is true. He
9 pointed out what's true, not true.

10 I asked Selwyn Vaughn on cross-examination, I asked
11 him specifically when you sat -- by the way, he couldn't lie
12 about this because every conversation, absent conversations
13 where they were setting up appointments or something, he says
14 Mr. Simels called him, every conversation was recorded. This
15 is not one of those situations where well, this witness, is he
16 reliable in accounting what was said during the conversation?
17 Every word is recorded and every word is audible.

18 In these conversations -- sorry, Selwyn Vaughn
19 doesn't say a word to Simels about claiming this is not true;
20 that this is made up. I asked him specifically, nevertheless,
21 I asked him did you ever tell Bob Simels what you're telling
22 us now that this isn't true? He said absolutely not,
23 absolutely not.

24 Here is something that is even more telling. Simels
25 does not include Vaughn in his Rule 15 motion. Remember in

Shargel-summation

1822

1 January of 2008 there's a motion before the court and the
2 judge is told I want the following witnesses to be deposed in
3 Guyana unless some of them can come up here to the
4 United States. I want to call these witnesses and he explains
5 in detail why it is that he wants to call these witnesses,
6 explains he wants to impeach the credibility of Clarke,
7 explains he wants to impeach the credibility of Alicia
8 Jagnarain. He's putting this all before the court, putting
9 this all before the government. He wants to go down, have a
10 formal deposition of witnesses that will impeach or undermine
11 their credibility.

12 Let me show you this. Simels, as I said a moment
13 ago, did not include Fineman in that, ignored what Roger Khan
14 said in this memo in January of 2008, totally ignored it, did
15 not take the suggestion that Fineman be put down as a witness.

16 If you look at the whole document, we don't have to
17 do it at the moment, being mindful of the clock, but if you
18 look at the whole document, there's an individual that Khan
19 mentioned named Roger Lenny. He said he would be a good
20 witness on my behalf. He would help establish the truth of
21 what happened here. He would help establish Clarke is not
22 worthy of belief, undermine his credibility. Guess what? You
23 haven't heard a word in this trial, by the way, about Roger
24 Lenny. Simels didn't include Lenny's name in the Rule 15
25 motion.

Shargel-summation

1823

1 There was another person, another person that was
2 recommended by Bob Simels. His name, in this document, Steve
3 Ceaser, someone that Bob Simels interviewed on one of his
4 trips to Guyana, listed as a Rule 15 witness, never a person
5 that was in conflict. In other words, Bob Simels was not just
6 relying on Roger Khan for his information. His investigation
7 was an independent one. His investigation was a true one. He
8 was seeking the truth because if he was seeking anything less
9 than the truth, he would have taken the client's version,
10 chance version, run with it, not check in any way.

11 He did check it, go down to Guyana, did interview
12 witnesses, meet with Peter Headley, Nigel Rodney, did those
13 things a lawyer is supposed to do, not to ultimately put
14 people on in court that were telling lies, not for suborning
15 perjury, not for obstructing justice.

16 As was said to you by Tony Ricco, that doesn't
17 happen until the case is in court. There were no attempts
18 made here. This was bona fide, lawful representation and that
19 is not punished by the law. Make no mistake about it.

20 Think about these tapes. Think about what was said.
21 Think about what Mr. D'Alessandro says over and over and over
22 again. It's Vaughn, not Simels who introduce the idea. I
23 told you this in my opening as well, sometimes subtly,
24 sometimes not, the idea of wrongdoing. We either have to buy
25 the witnesses, pressure the witnesses, whatever the quote was.

1 The fact is if you listen to that tape -- by the way, if you
2 ask to listen to that portion of the tape, there are two
3 things going on when Vaughn sees the opportunity to float that
4 one by Simels. He was talking about rebooting the computer in
5 the morning, talking about the computer problems he was
6 having. I submit to you he wouldn't have spoken that non
7 sequitur if he didn't have his back to Vaughn looking at the
8 computer. That's fact one.

9 Fact two, if you listen carefully, there's a
10 secretary, a female voice in the background calling Bob
11 Simels's at that time. Selwyn Vaughn knew what he was doing.
12 Selwyn Vaughn over and over again was the one who introduced
13 witnesses disappearing off the earth, witnesses having amnesia
14 or the "everyone loves his mother" when Bob Simels doesn't
15 even respond in any meaningful way. Not in any meaningful
16 way, ladies and gentlemen.

17 Here's the point I want to make to you when you
18 think about attempt and when you think about the charges in
19 this case. Nothing -- I said this once before. I want to
20 develop it a little more. Nothing ever happened. More than
21 nothing ever happened. Even in the context of nothing ever
22 happens, every point that's raised, every point that's the
23 slightest bit shady, every point that has even a hint -- a
24 hint -- all by Vaughn, never by Simels -- even if it has a
25 slight hint of criminality it's dropped. Use this as your

Shargel-summation

1825

1 barometer.

2 You can use whatever tools you like when you go back
3 to the jury room, organize your thinking in any way. I would
4 ask you, respectfully, that you use this tool as your
5 barometer. You raise the most dastardly subject on these
6 tapes, all the skulduggery, bad acting that Vaughn himself is
7 putting on the tapes, sprinkling the tapes with -- again and
8 again and you look at all of that, you'll see that the subject
9 is raised and then it disappears. It falls of its own weight.

10 Let me give you the specifics. All this talk about
11 seeing David Clarke, Vaughn is going to go in, see David
12 Clarke. Rogers want to see David. Don't talk about anything.
13 Just go there. It will make you a better witness. Just do
14 that.

15 How is that followed up on? Do you hear anymore
16 after that is said, hear another word throughout the tapes
17 right up to the end? You heard tapes in September, August.
18 Did you hear another word about this person seeing David
19 Clarke? David Clarke is one of their primo cooperators, down
20 for anything.

21 Was there any arrangement for Selwyn Vaughn to see?
22 If it happened -- let's not go there. My question was it
23 ever discussed again? Well, what's going on, Fineman, will
24 you seeing Clarke or not? What's going on? No, it's raised,
25 sometimes once, sometimes twice, sometimes three times and it

Shargel-summation

1826

1 just fades away. Whatever happened to the interview with
2 David Clarke?

3 Visiting Clarke's mother, that was a hot topic given
4 what was said. Visiting Clarke's mother. Was that dropped?
5 Yes, that was dropped. Why didn't Simels say did you talk to
6 the mother yet? You've been telling me you know where all the
7 Clarkes are, the little Clarkes, big Clarkes, relative
8 Clarkes, have you seen any of the Clarkes? No.

9 George Allison. Totally dropped. Sending an
10 affidavit to Ryan Pemberton. You saw the affidavit. There's
11 no evidence. I brought this out in cross-examination. I
12 bring it out again. No evidence it was ever sent. All the
13 evidence is it wasn't. The draft is in the law office.

14 Paying money to the Clarke family, remember paying
15 money to the Clarke family? You heard about it this morning.
16 The subject was dropped. Did Bob Simels say hey, man, did you
17 find the Clarke people? How much do they want? What's the
18 story with them?

19 Put pressure on Alicia Jagnarain. Here's another
20 one, totally dropped, nothing happens. Vaughn gets a list of
21 things to do. Remember the list of things to do, Frost in the
22 upper left-hand corner, it says Frost, then we showed it was
23 actually part of a larger exhibit where all the investigators
24 are given things to do. So, he gets the memo. Does anyone
25 say to him, does Bob Simels say what happened to the memo I

Shargel-summation

1827

1 gave you? What happened to those people that you were going
2 to find, all the things you were going to do? What happened?
3 There's nothing like that. That's dropped.

4 What happened to Farrah, her money, my dancer, as
5 Bob Simels, unfortunately, explaining what was said on tape,
6 Bob Simels said one time, that subject was dropped as well
7 even though with Farrah it's perfectly legal to pay for
8 information.

9 Obviously, Vaughn is an informant, wasn't going out
10 to those people. Why didn't Bob Simels ever say to him here's
11 a simple one. Did you get the phones yet? I gave you a
12 thousand bucks. What's with the phones? Do you have the
13 phones? Are you ready to go? What's the story or did you
14 find Clarke's family yet? The bottom line is always the same.
15 Nothing happens. It's talk. It's careless talk. I submit to
16 you that careless and criminal intent are mutually exclusive.

17 You'll listen to the judge's charge on that.
18 Carelessness is not the criminal intent required in connection
19 with any -- I defer to the judge's instructions --
20 carelessness does not conform with criminal intent on any of
21 these offenses.

22 I say this with respect, since the man is behind me,
23 I say it with respect anyway, Agent Mazzella, you heard about
24 his supervision of Selwyn Vaughn, saw his supervision where he
25 said this is after the June 11th meeting -- by the way you

Shargel-summation

1828

1 heard argument the government after June 11th, they had a case
2 against Mr. Simels, so on. Agent Mazzella is saying in
3 e-mails to the prosecutors, testified to it, Mr. Simels says
4 wiggle room. We have to tighten it up. Here's a game plan.
5 These are unfortunate words, really, and I'm not sure -- you
6 can make your own assessment -- I'm not sure Agent Mazzella is
7 comfortable being examined about those e-mails turned over to
8 us pursuant to law. To use words like that, I suggest, would
9 be somewhat unseemly; that you're investigating someone.
10 You're talking about game plans. I have a great idea. He's
11 got some wiggle room here, some wiggle room there. We're
12 going to tighten it up like they're out looking for cattle. I
13 don't think that's too cool, if I may, but you'll make your
14 own judgment on that.

15 I have another question. There comes a time, you
16 heard again this morning, ladies and gentlemen, you know,
17 there was all this talk of violence. We had to switch to a
18 new game plan, all this talk of violence. They even offered
19 in support of the violence a memo that said these witnesses
20 can kill Clarke and they offer that as a suggestion that what,
21 the witnesses -- it was obvious. Mr. Mazzella said, the very
22 last answer on cross-examination or actually recross
23 examination, I said did you really think that was the violence
24 that someone had on his mind? He said in a very low voice no,
25 no.

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Shargel-summation

1829

1 I want to ask you this question before we leave this
2 subject and talk about others. I want to ask you this
3 question. First, I'll say this. The judge will tell you that
4 the government is not required to use any particular
5 investigative techniques. I can't say you should have done
6 this, shouldn't have done that. On the other hand, they are
7 required to prove guilt beyond a reasonable doubt. So, with
8 that context, I put the following before you. Particularly
9 coming in connection with an investigator that uses the term
10 more than once, wiggle room, I put this before you. If the
11 government thought Mr. Simels was serious about anything that
12 he said to Selwyn Vaughn, why wouldn't this happen? Why
13 wouldn't Vaughn come back to him? In other words, he never
14 comes back to him, I said I did this, that, I'm about to do
15 this. Why didn't he come back and say you know, we heard so
16 much about Allison. You know, Mr. Simels, we just found out
17 that Allison's hold up in an apartment in Queens. Me and the
18 boys are ready, ready to go. We've got the guns. Are you
19 okay with this?

20 Now, that conversation, if it ever took place, they
21 didn't want to take the chance. They didn't want to take the
22 chance because that would have revealed what was on Bob
23 Simels's mind. That would have revealed whether Bob Simels
24 would have kicked his butt -- excuse me -- out of the office.
25 That was no longer talk but that's not what happened. All

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OCR

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CRR

CSR

Shargel-summation

1830

1 talk was dropped. Easy to do. Simels didn't know where
2 Allison was, sending people out to find him again and again.
3 If you want to find out what's on Simels's mind, that's surely
4 a way to do it. Probably you could think of 2700 variations
5 of that theme and they didn't do any of that, but we'll see
6 later more of what they didn't do.

7 I want to tell you this. The word "neutralize,"
8 we're not running away from it. It was in fact the defense
9 strategy, as you may find from the evidence to neutralize
10 Clarke or any other government witness. There you go, I said
11 it. I said it. That was the strategy. You can neutralize or
12 eliminate a witness two ways and both of them are lawful.

13 Tony Ricco told you about both ways. If you could
14 find out a witness was deceitful while a government cooperator
15 or selling dope or hiding money or committing other crimes or
16 lying, their value as a witness will plummet or evaporate and
17 the government may choose not to call them. Tony Ricco
18 himself told you about his own experience when someone
19 actually called him to the Trenton State Prison, demanded
20 \$250,000 to change his testimony and come along, testify Tony
21 Ricco's way. He wasn't talking to an intermediary where
22 Simels was wanting to meet the real person. He was sitting
23 down with the real person, as he described it, got the
24 evidence on the pad after the first sheet was swallowed --
25 kind of a cool story and Tony Ricco went to the FBI and that

Shargel-summation

1831

1 was the end of the case, a murder case that disappeared, faded
2 away.

3 A witness couldn't be neutralized that way. You
4 could still -- and here are the words. Yes, I'll say them.
5 You can destroy, you can kill, neutralize, eliminate a witness
6 with cross-examination. These words that you heard from Bob
7 Simels, went unchallenged, advertised in any programs across
8 this country, cross-to-kill in continuing legal education
9 programs.

10 Would the government be happier if the lawyer said
11 to Selwyn Vaughn, you know, sir, we're trying to gather
12 evidence to impeach or undermine the witnesses, or to develop
13 bad acts they engaged in admissible under Rule 608? Is that
14 how you're supposed to speak to these people? When people
15 speak in the vernacular, it's within the lexicon of lawyers,
16 the lexicon of lawyers and is within the lexicon of lawyers,
17 as you heard, to use words like that, words alone that are not
18 the subject of prosecution. Words are not sufficient. Words
19 are not adequate to find Mr. Simels guilty of any crime here.

20 Selwyn Vaughn could be a help on killing and
21 neutralizing, eliminating witnesses, but not through
22 corruption, but through investigation. Something, one thing
23 that rings true, when Bob Simels said the white investigator,
24 you don't have to think any further than Deb Martin or Steve
25 Sessler. Here's this Guyanese guy who answers the door, sees

Shargel-summation

1832

1 Deb Martin in front of him -- what? They're going to get
2 warm, cozy, invite her in for a cup of tea? I don't think so.

3 Steve Sessler, they needed people to be able to get
4 into the Guyanese neighborhood, the bars, the businesses, yes,
5 the strip clubs and that's exactly the moment when
6 Selwyn Vaughn said we need -- I'll be your Guyanese
7 investigator.

8 You know, you might say well, one Guyanese speaking
9 to another, I think that was a reference, would be easier and
10 you might say Selwyn Vaughn was not just one Guyanese, what
11 about the phantom gang, beneath all those fancy clothes he was
12 wearing, that nice jacket, paid for by who? U.S. taxpayers --
13 while he doesn't pay his own taxes, as he admitted, was a
14 murderous thug. So unleashing, as the government likes to
15 say, unleashing Selwyn Vaughn on these people?

16 Even on the witness stand in front of you, Vaughn
17 didn't tell it that way. Vaughn describes himself, despite
18 what they say he's done, what he admits to, he describes
19 himself as a decent person, a decent person among wrongdoers,
20 didn't want innocents to be killed. Allison, after he phoned
21 Roger Khan, Allison was coming out of the boxing gym, what
22 clothes he was wearing. He said he was shocked, his words,
23 that the guy was murdered just minutes later, gunned down in a
24 drive-by. Imagine this. I'm sure a short time after he's
25 shocked about Allison, he was asked to report on the

Shargel-summation

1833

1 whereabouts of the TV talk show Ronald Wadel (ph), shocked
2 that Wadel was murdered. Happened again. He tells you he
3 dismantles bombs so children aren't hurt. When a woman is
4 tortured for nine hours, present, his sole reason for being
5 there was to make sure she got home safely. That was the
6 testimony. He was there from 7:30 at night until 5:00 o'clock
7 in the morning for the sole purpose -- his job -- his
8 assignment was to make sure the tortured woman got home
9 safely. The government seems to embrace these stories despite
10 the fact Selwyn Vaughn, let me remind you, committed perjury
11 right in front of you.

12 Remember I asked him a question that night? The
13 cross-examination started late in the night or maybe the next
14 morning. I asked him how many times were you prepped by the
15 government for this testimony? Let's make it plain. There's
16 nothing wrong with it. The judge will tell you that, nothing
17 wrong with prepping a witness, perfectly fine, but it's fair
18 also for the lawyer to ask how many times were you prepped by
19 the government. He said, under his oath looking at you, he
20 said twice. I pressed him. Twice? He said yes, within the
21 last month, twice. He wasn't making like it was more before
22 that. Witness prep, twice, lasted several hours each time.
23 When Agent Mazzella was on the stand, I put the question to
24 Agent Mazzella. The answer was 15 times. Now, that's not a
25 mistake. That's not an accident, no innocent reason that

Shargel-summation

1834

1 explains that. He said 15 times.

2 I asked him also because when I did cross examine
3 him for five or so minutes that night, he finished his direct
4 at ten minutes to 5:00 or 5 minutes to 5:00. He was a little
5 nutsy up there, tried to refresh his recollection what
6 document that was, four sentences, and took him like ten
7 minutes to read it but he was reading like a champion on
8 direct examination.

9 They say Mr. Simels change his demeanor. Make no
10 mistake about it, Selwyn Vaughn had a dramatic change in
11 demeanor for that cross-examination, but he came in the next
12 day -- I'll say this quickly -- as a different person,
13 presenting himself yes, sir; no sir. Did someone speak to you
14 overnight, speak to investigator Mazzella overnight? No, he
15 stayed in the room. I went home with Agent Jackson, walked me
16 out or whatever she did. I said nothing to Agent Mazzella.

17 Agent Mazzella came on the stand the next day. Did
18 you speak to him? Yes. Are these giant lies? No. But are
19 they lies? Yes. They're more giant than Mr. Sapone. Isn't
20 it a fact that you, too, lied at the GEO facility? I think
21 there are bigger lies than that.

22 Whatever there is to be said about the character of
23 Selwyn Vaughn, the recorded conversations and this is a
24 pointed I want to echo, a point Mr. Solano made but I want to
25 do it in connection with Mr. Simels because it resounds just

Shargel-summation

1835

1 as well with Mr. Simels. Whatever you can say about
2 Selwyn Vaughn's character, the recorded conversations show, at
3 least that's the universe, the whole universe of conversations
4 they had, that he was not revealing himself to Bob Simels.
5 Over and over again, Simels says I'm looking for information.
6 What are the things you would do for us? I don't have to
7 repeat the testimony.

8 Vaughn tells him absolutely nothing about criminal
9 activity. He doesn't tell him and I even asked him on
10 cross-examination, doesn't tell him about Khan exporting
11 cocaine to the United States and Europe, about the murders,
12 doesn't tell him about the torture, anything, because
13 Selwyn Vaughn came, as it was, with Ms. Irving. He came as a
14 person who could help the defense and the rest was just a lot
15 of conversation to get ultimately very little.

16 I'll tell you something interesting about Bob
17 Simels's reaction to Selwyn Vaughn. Could we have the time
18 line? I put a time line together, illustrates the following
19 point. I respectfully submit it illustrates it well. This
20 meeting on May 13th, this long meeting that goes on well over
21 an hour, you would think if this guy was going to be the
22 coconspirator who was going to take care of the witnesses, do
23 what he has to do, May 13th at 4:00 p.m., that's the first
24 time they ever meet.

25 Let's have the next one. Then on May 22nd,

Shargel-summation

1836

1 Mr. Simels, a voice mail, Fineman, I haven't heard anything
2 back from you. I'm just giving you a call to see what's up.
3 I wanted to make the point to you Simels was not calling him,
4 saying come in, come in, let's get going. We have to get this
5 criminal conspiracy on its feet. We have to get going.

6 The next line, this is May 29th, good afternoon,
7 Mr. Simels. Not here right now, take a message? Tell him
8 Roger's friend Selwyn calls.

9 This is 16 days later, Simels is not calling Vaughn.
10 Vaughn, hello, this is May 29th, again, two minutes later,
11 hello this is Fineman here. I'm giving you a call because the
12 letter that you scanned, sent to me, so give me a call later
13 on, no problem. That's the letter, by the way, tell them all,
14 I don't have to put that back up again.

15 Then the next one, June 11th, he calls. Actually,
16 I've been trying to get you to select two weeks, man. I leave
17 messages on your cell phone, at your office. So, let me try
18 again this morning. I see if I get through. This is to
19 arrange the June 11th meeting.

20 The point is this is not, you know, Bob Simels and
21 his eyes light up, ready to go, ready to get in bed with
22 Selwyn Vaughn and get going on this conspiracy. I'm not going
23 to put it up on the screen. You have this tell-all note.
24 When Selwyn Vaughn shows up, guess what he doesn't do on
25 June 11th. He doesn't tell all. It never changes. He

Shargel-summation

1837

1 doesn't tell all, admit he's a violent person, doesn't admit
2 he's in the drug business, doesn't admit he got the profit of
3 cocaine sales in return for what he did in connection with the
4 Wade murder, the murder of Donald Allison.

5 I'm thinking about the time, Judge.

6 (Side bar.)

7 MR. SHARGEL: You could tell I was racing, watching
8 the clock, going faster than I should be going, discharging my
9 own obligation. I have probably nine more pages of notes.

10 My application, with respect, to do what I've done
11 before, if we can break now? I will take no more than 30
12 minutes tomorrow morning.

13 THE COURT: No, let's finish it up. Take all the
14 time you need. I'm going to give the government a half hour
15 for rebuttal. If that takes us over to tomorrow morning, so
16 be it. Take the time you need to finish summation.

17 (Continued on next page.)

18 (Open court.)

19 (Continued on next page.)

20

21

22

23

24

25

Summation - Shargel

1838

1 (The following took place in open court)

2 MR. SHARGEL (Cont'd): THE COURT: You may.

3 MR. SHARGEL: You know, I always marvel at lawyers
4 on TV. No matter how complex or complicated the case, there's
5 no summation that lasts more than 90 seconds. Unfortunately,
6 we can't do that. So I just want to -- I think that I was
7 watching the clock and racing and I just want to slow down a
8 little bit but it is not my intention to bore you and I am not
9 going to bore and I'm going to bring you down a little bit.
10 I am asking you to consider and to note how during this entire
11 episode when I talk about the episode I'm talking about this
12 period -- not going back to the 6th, I am talking about the
13 period May 13th and September the 10th when Mr. Simels was
14 arrested.

15 If Bob Simels had been told by Vaughn that he had
16 participated in one murder, two murders, whatever he was
17 involved in, would his reactions to Vaughn been completely
18 different? Would it have been completely different? I would
19 suspect the investigators did not want to find out, and that
20 is not something that stands in isolation. That is not
21 something that stands in isolation because remember in my
22 opening I said something and I put myself out there. I said
23 that you are going to find a gaping hole in this case, and the
24 gaping hole -- I don't want to keep you in suspense --
25 occurred on September 10th, the day of the arrest. But I

Summation - Shargel

1839

1 mentioned September 10th now because I want to bring you back
2 to this period of time, before September 10th, when the
3 government, the agency, investigators, the prosecutors,
4 deliberately and intentionally kept from Bob Simels this true
5 character of Selwyn Vaughn as I said a moment ago that you
6 could barely get out of in the memo because he's held
7 everything in such a positive way for himself and spins it in
8 favor of himself.

9 So the tell-all note that you saw, and all you
10 recall is underscored twice, the tell-all note meant nothing
11 to Vaughn. And you know Mr. Solano is right. It is a pretty
12 innocuous note. It doesn't look like conspiratorial note. It
13 openly mentioned the \$1,000. It openly mentions the
14 circumstances. These are my lawyers. Trust the lawyers. You
15 might infer that a lawyer has seen this a 1,000 times. Tell
16 my lawyers all. It doesn't say, wink, wink. There's no
17 hidden message. There's code on the bottom. There's no --
18 there's nothing in a different language. Nothing. Tell my
19 lawyers all. You can trust them. I trust them. Tell them
20 all.

21 And first, why would Khan say that if he were such a
22 guilty party? And second, if this is the boss saying tell my
23 lawyers all, why didn't he tell them all because it is
24 actually June 20th when he has the tell-all in his pocket and
25 June 20th, Bob Simels, I am still looking at it. Still trying

Summation - Shargel

1840

1 to learn more about the case. Is Khan telling him the truth
2 or not. And this is very interesting. When Bob Simels puts
3 the fact in front of him and Vaughn says true, true, he's
4 agreeing with everything that Bob Simels is saying many, many
5 times. And I said, well, why are you saying true, true? He
6 says it's like a habit, a tic or something. He automatically
7 says true, true and that's why he told Bob Simels true, true.
8 Really? You can look at this testimony with a fine tooth
9 comb. He was on the stand for about two or three days. You
10 are not going to find a single true, true or even a single
11 true. There are not trues. In other words, what? He cured
12 his habit before he hit the witness stand? I don't think so.

13 This case, and I'm going to make this point because
14 it is really a different one, but the point I want to
15 emphasize, this point that I am just leaving, is the point
16 that Bob Simels was never apprised of what Khan's character
17 actually was, but here's another point.

18 I keep saying Khan but I meant Selwyn Vaughn.
19 Here's another point. The other point is this. Khan from the
20 beginning -- from the initial retainer with Bob Simels in
21 August of 2006 never admitted that he was guilty. The opposite
22 was true. He said, and that exhibit in January 18th and other
23 exhibits as well, he said that Clarke was making up a story.
24 He was the one that first told Bob Simels about the cultural
25 and political divide. Bob Simels travelled to Guyana to try

Summation - Shargel

1841

1 to verify that story, and he did. It turned out to be true.
2 Khan wasn't the client who said to his lawyer, look, just
3 defined me. I did what I did. It is what it is and I defend
4 me and get me the best possible resolution of the case that
5 you can get me. That was not what Khan was saying at all. He
6 was saying that Clarke was lying. He was saying Alicia
7 Jagnarain was making up a story about the drug ledgers, and by
8 the way, not only did Bob Simels verify or corroborate what
9 Khan was saying about Clarke, he also corroborated the Alicia
10 Jagnarain situation where he said that at the trial that --
11 where she testified as a cooperating witness she didn't know
12 who short man was and now, all of a sudden, these are Roger
13 Khan's drug ledgers and Roger Khan is short man, after saying
14 something completely different. So there was corroboration for
15 Khan's claim that Alicia Jagnarain was lying. Khan said that
16 he was not the short man who was supplying the cocaine, that
17 there was another short man, and you know what the resolution
18 was with that. These assertions by Khan that were supported
19 by evidence that Simels was then covering about the bloody
20 cultural and political divide in Guyana, that Clarke was on
21 the military side, while Khan was on the civil government
22 side. He learned from Nigel Rodney and Peter Headley and
23 others that Khan had support for the proposition that he was
24 not guilty of the charges contained in the indictment. And
25 Selwyn Vaughn never came to Bob Simels and said why are you

Summation - Shargel

1842

1 asking these questions, man? Let's stop kidding each other.

2 I am here to help. He never said anything like that. He kept
3 up the pretense that he was agreeing with Simels was saying.

4 So we look at these people who are named in the
5 chart that the government put up and put on the elmo who are
6 the targets and let's think about this. David Clarke, Bob
7 Simels said over and over again he's lying and I want to get
8 him to tell the truth. Either tell the truth before he goes on
9 the witness stand or if he doesn't tell the truth before he
10 goes on the witness stand, then let him tell truth during
11 cross examination.

12 Leslyn Camacho. Let me tell you something about
13 Leslyn Camacho. The government looked at her proposed
14 affidavit because there was no affidavit, and Bob Simels was
15 not looking to shove any affidavit at her because Bob Simels
16 said even on one occasion when he was invited out to meet her
17 at different locations, Bob Simels said I won't have my
18 printer with me. I need my printer because, obviously,
19 there's going to be more facts and she may reject some facts.
20 I to be at a printer. That is why he insisted on coming into
21 the office. But there was a time I think, and I'm -- not I
22 think, I know you learned this during the testimony where you
23 -- where you this in evidence, where Bob Simels, each and
24 every time when he went to Guyana, that all four memos are in
25 evidence, created a memo as to what it is that happened, what

Summation - Shargel

1843

1 happened in Guyana. You have a memo that I think we could put
2 up.

3 Let's take a look at it. This is the one -- the
4 reason the e-mail came up first. This is the one where he
5 e-mailed himself from Guyana so he would have it on a server
6 when he got back. This is before he was arrested. This is
7 before anything. This is before he's thinking about the
8 government coming after him. This is a memo of a visit to
9 Guyana. I think this is a June -- this is the June 2008
10 visit.

11 Significant to note, because the affidavit for
12 Leslyn Camacho is prepared after this. Clarke is an Islamist
13 fundamentalist and hates America. Then it goes on.
14 Fraternizes with cadets, both females -- and there's all kinds
15 of information about Clarke that's learned by Simels in Guyana
16 from interviewing people in Guyana having nothing to do Selwyn
17 Vaughn, going out on his own and trying to gather the
18 information.

19 This is the information that he was putting in
20 Leslyn Camacho's affidavit as a draft to see whether she
21 agreed with it. This is the information. There was a factual
22 basis for this. He wasn't making things up out of whole
23 cloth. He wasn't sitting around just making up the fact that
24 he hates America and he wants to Leslyn Camacho to say it. He
25 wanted Leslyn Camacho to say it if it were true. He wanted

Summation - Shargel

1844

1 Leslyn Camacho, like he did with every other piece of
2 information that came into his possession, he wanted to check
3 it out, and if someone told him in June of 2008 that Clarke is
4 an Islamist fundamentalist and hates America, he wanted to
5 find out if his girlfriend knew that. That is common sense.
6 That was would be a fair question. No one was suggesting that
7 she be corrupted. We will talk about what happens later, but
8 there was no suggestion that she should give a false
9 affidavit.

10 And Alicia Jagnarain. Alicia Jagnarain, as I said
11 moments ago, was a person who Bob Simels believed was lying.
12 She changes her testimony from a case in which she came into
13 this courthouse, swore to tell the truth, and said something
14 different than she'd be saying now.

15 George Alabama. Bob Simels wanted to talk to him.
16 Wanted to talk to him and find out what the truth was.

17 Ryan Pemberton. Bob Simels said he thought he was
18 lying. That he's a crazy kid who was lying. Farrah was not a
19 witness. He wanted information from her. And that reference
20 to paying a dancer? There is nothing wrong with paying for
21 information. And son. There is evidence in the record that
22 his brother was, in fact, a judge. And Bob Simels said he
23 believed that he had confused Roger Khan with someone else
24 also named Khan who looked very much like him. He wanted the
25 truth. And he wanted the truth because he said it over and

Summation - Shargel

1845

1 over and over again with Selwyn Vaughn. He wanted the truth.

2 Now, the Judge is going to tell you that there's a
3 defense here. He will tell you about a certain defense, and
4 the defense is recognized by our law. Not only is there a
5 defense that lawful bona fide conduct in representing a client
6 is not subject to a penal sanctions -- in other words, you
7 can't be prosecuted for just doing your job as a lawyer --
8 there's another defense that Congress recognizes and that's
9 embroidered in the law, and that is, and this is, again, the
10 Judge will give you the instruction and if there's anything
11 that conflicts what I am saying it is the Judge, and the Judge
12 only who is the kind of the master of the law in this
13 courtroom as it is in every courtroom, but the instruction I
14 expect would be that if Bob Simels' sole intention was to
15 encourage, induce -- I am reading to you, so I want to get it
16 right -- induce or cause a person like a David Clarke or
17 Alicia Jagnarain to tell the truth or at least, not get up on
18 that chair or a chair like it and tell a lie, that is a
19 complete defense to the charge of witness tampering or
20 obstruction, as long as Bob Simels' conduct in doing that was
21 lawful and as I said before, nothing in this case that ever
22 happened was unlawful, and there was no attempt within the
23 meaning of the law. And the Judge is going to tell you with
24 regard to that defense, and that defense only, that we have a
25 burden of proof -- not because Bob Simels has a burden of

Summation - Shargel

1846

1 proof. The law says you can have this defense, but anyone
2 raising the defense in any courtroom in America applies to
3 everyone -- not tailored for Mr. Simels -- has what we call a
4 burden. It's a slight burden. It is not like the
5 government's burden. The government still has the burden of
6 proving each and every element of an offense beyond a
7 reasonable doubt. But if we have taken the position, as we
8 have, that Bob Simels was trying to get truthful testimony or
9 stop false swearing, then under those circumstances it is our
10 burden to show that he believed that, and that his action was
11 lawful. And I'm saying to you that we can easily meet that
12 burden. That burden is what is called the preponderance of
13 the evidence. If the scales tips the slightest of degrees,
14 the Judge will explain it more carefully, but if the scale
15 shifts in the slightest degree in his favor, he is entitled to
16 the defense. You know, Bob Simels said when he was on the
17 witness stand that Khan kept telling him that he was innocent,
18 and as I said earlier, Judge Gleeson told you that is not the
19 question for you. This is not the Khan case. The question is
20 what was on Bob Simels' mind. And I am saying to you that
21 everything in this case supports the idea that he believed
22 that Khan was innocent because Khan was -- not only was Khan
23 giving him this information, it was being corroborated and
24 being checked out everywhere he went, whether it was in Guyana
25 and/or whether it was on the streets of New York City.

Summation - Shargel

1847

1 The Judge is going to tell you -- the Judge is going
2 to tell you that this defend exists and I leave you to those
3 instructions, and you will see over and over again that
4 Mr. Simels -- that the evidence in this case is that
5 Mr. Simels firmly believed that Khan was innocent and he had
6 no reason to believe that he wasn't. He said that the
7 witnesses were lying in court proceedings, and he said it
8 before you in this courtroom, but he said it to the Judge --
9 Judge Irizarry in submissions -- that Clarke was lying, that
10 Alicia Jagnarain is lying, that the case against Roger Khan
11 was a false one because this is what he had been told over and
12 over again, and you know something, he was never cross
13 examined about it. He was never cross examined about the
14 conversations with Roger Khan and what led to the belief, as
15 he testified, that Roger Khan was not guilty of these charges.

16 The government says Simels knew that people like
17 Paul Rodriguez and Sean Bellfield were dangerous killers
18 because he asked a question about whether Allison -- whether
19 they were participating in the Allison murder, but if you look
20 at those questions I don't have to put them on the screen again
21 because if you look at those questions and answers, once
22 again, he was doing what he had been doing repeatedly, over
23 and over and over again, he would be putting the question
24 without fear of the answer. He wanted to know the answers, but
25 he wasn't getting the straight answers. He wanted to know

Summation - Shargel

1848

1 what really happened with Paul Rodriguez and Sean Bellfield
2 but he was not getting the straight answer.

3 I can put this argument to rest, this argument that
4 he knew that the people on the board were killers. I can put
5 these arguments to rest. Let's look at the rule 15 affidavit
6 by Mr. Simels. This is an affirmation because -- it's the same
7 thing, it is a sworn statement by the lawyer.

8 So this is United States against Shaheed Khan, the
9 number of that case and let's go to, I believe, paragraph ten.

10 I have participated -- Mr. Simels says under oath in
11 a court proceeding -- he is telling the Judge -- in the
12 interviews of eight such prospective witness. You are
13 entitled to look at the whole document when you go back to the
14 jury room. So he is talking about the witnesses who undermine
15 Clarke and help the defense in this case and help prove Khan's
16 innocence and Ceaser stated that I participated in eight such
17 prospective witnesses. You see this includes Paul Rodriguez
18 and Sean Bellfield. Ceaser stated that he would be unwilling
19 to come to the United States voluntarily even though I told
20 him I will pay all his expenses, but then the next sentence.
21 Peters, Smith, Bellfield and Rodriguez stated that they would
22 be willing to come to the United States to testify but have no
23 visa and they were asking in the footnote whether they get the
24 visa. The visa they are talking about is not an S visa. The
25 visa they are talking about is just to come for the testimony

Summation - Shargel

1849

1 and then go back, but if these people were involved in murders
2 and there was a drug gang in Guyana sending drugs to the
3 United States and they were part of that gang, as the
4 government is arguing in this courtroom, then they would be
5 subject to arrest in the United States. Not only
6 cross-examination at the deposition, not only investigation
7 after the date of birth had been given, because you heard
8 testimony that you have to give a defense witness' date of
9 birth, but that information would have to be put before the
10 Court. And the United States Attorney's Office with the
11 investigative resources that they have, those people, the
12 people -- that is the suggestion that Bob Simels knew they
13 were killers and murderers and treacherous people and anything
14 other than what they were presenting as, and they were not
15 presenting as killers, would he be talking about them out in
16 open and say they will come to the United States or a better
17 question would be why would they be willing to come to the
18 United States and subject themselves to arrest and life terms
19 for committing murders in aid of drug offenses? He didn't
20 know. That's the point.

21 I have another question because the questions just
22 keep coming and coming. If this is a criminal conspiracy
23 with Fineman and Fineman is a thug just up to no good and he's
24 in this criminal green room with Bob Simels -- let me ask you
25 a question. You know, you heard about the memos, the memos

Summation - Shargel

1850

1 having accurate renditions or descriptions by Ms. Irving as to
2 what Fineman was doing. You have that, and you also have more
3 than that. Fineman's name is all over the place -- e-mails,
4 IMs, memos, billing records, time-sheets for records of
5 lawyers even charging on the fee basis. They keep, records as
6 you have heard, of their time, the hours they put in the case.
7 That is how we know there are more than 3700 hours in the
8 case. Why would Fineman's name -- this was prepared by
9 information flight to a bookkeeper. Why would Fineman's name
10 be out there? Why would there be copies of e-mails going to
11 other lawyers in the case? Why would there be copies of
12 e-mails describing Fineman to other investigators in the case?
13 Is the government suggesting that all the lawyers who worked
14 on the case and all the investigators who worked on the case
15 were criminals, too?

16 They give a draft affidavit to Fineman and put it in
17 an envelope that says law offices of Bob Simels; is that what
18 a criminal does? Is that what do you when you are in
19 conspiracy with someone? So you will easily come back to me
20 and you can easily identify. You just put the offensive
21 criminal affidavit, as the government would have it, in an
22 envelope, and it says law offices of Bob Simels stamped right
23 on the top and then you give it to criminal who is going to go
24 out and do harm. Oh, I hope he doesn't drop it, you know.
25 That is ridiculous.

Summation - Shargel

1851

1 Are you going to give him a to-do list with the name
2 Frost right on the top or Frost with a licensed private
3 investigator in this city and they can find that out in about
4 two seconds? Why does Fineman have this list? Because he's a
5 criminal out to do no good? Well, why would anyone do that?
6 And why starting in 2007 into 2008 why would Bob Simels go to
7 court over and over again?

8 By the way, go to court. Remember on this equipment
9 he went to court to enforce a subpoena. I forgot that. He
10 went to court to enforce a subpoena to get the information and
11 the documentation. He started with the people in Florida and
12 then had to have communication with the people in London. He
13 said why are you doing this. Why are you withholding the
14 documents. I need these documents to prove that when Khan
15 recorded these conversations he wasn't doing it as some rogue,
16 he was doing it on behalf of the Guyanese government. That is
17 what he wants to do. He wasn't making a secret about this
18 equipment. He is innocently asking as a lawyer representing a
19 client.

20 Are they suggesting that Bob Simels is the dumbest
21 criminal on the face of the earth? Is that the suggestion
22 here? That he leads a trail and scatters bread crumbs so that
23 everybody can follow him? And when Fineman goes out and does
24 his dirty deed who is going to the flesh that with the
25 envelope and the cross names and the information that is sent

Summation - Shargel

1852

1 to him that had Bob Simels' fingerprints on it and Arienne
2 Irving's fingerprints on it?

3 Do you think that he never thought that it might
4 happen? That he was going to go what? The point is this is
5 consistent with innocence. It is not consistent with guilt.
6 They have the burden of proof. This is not consistent with
7 guilty. This is flatly and plainly inconsistent with guilt.
8 Goes before the court and tell the Judge in January of 08 in
9 that sworn deposition exactly why he wants to undermine Clarke
10 and Alicia Jagnarain's credibility. He puts right before the
11 court exactly what it is that he is doing, and at the same
12 time is this really the government's theory? Can they stand
13 up with a straight face and say at the same time he's telling
14 the court about these people he's going to have Fineman go out
15 and tamper with them but he'll keep it -- oh, the government
16 goes one step further, he will call Fineman as a. Witness
17 what? This doesn't make any sense. This case doesn't make
18 any sense.

19 Another thing. During the summer of 2008 -- from
20 June, actually from the spring May 31st to September 10th do
21 you think that, well, we have Fineman on the job now, don't
22 need to do anything more. Fineman will take care of
23 everything. We've been investigating for two years, but hey,
24 Fineman is here. We can all go and relax because he'll take
25 over. If you look at the documents in this case what happens?

Summation - Shargel

1853

1 What happens is that Bob Simels is directing his investigators
2 through June and July and August and right up to when he is
3 arrested to keep going. Try and find the people. The same
4 people, by the way. It is not just different people, but the
5 same people. Go try to find them. I want to interview them.
6 I want to interview them. And you saw what happened once he
7 interviews people. Nothing was wrong. He is duplicating this
8 assignments that he is discussing with Fineman. Fineman at
9 the end of the day produced nothing for Bob Simels.

10 Remember Bob Simels -- I had this up on the screen
11 -- wrote to the president of Guyana, the president of the
12 country, and said could you provide me with documents on
13 Clarke? I want to use them for ammunition -- maybe that is a
14 bad word. Forget ammunition. I want to use them to impeach
15 Clarke. I mean he's telling the president of the country what
16 h he's doing and what he is trying to gather and what he wants
17 to accomplish.

18 And you know something, there is no motive. I agree
19 that Arienne Irving has no motive on her. You have to be
20 thinking about what the government people are thinking to even
21 put her in this charge but Bob Simels had no motive on her to
22 engage in criminal conduct with Fineman or anyone else.

23 What's in it for him? He is 62 years old, as he's
24 testified. Thirty-five years experience as a lawyer. The fee
25 is the same in a criminal case whether you win or whether you

Summation - Shargel

1854

1 lose. There are no contingency fees -- you heard this from
2 Tony Ricco -- in a criminal case. You don't get more if you
3 win. There was no bonus promised. Khan hadn't paid what he
4 was supposed to pay. That is a matter of record. It is all
5 over the place, and the reason that Bob Simels didn't get paid
6 is his enthusiasm and his zealousness about the case caused
7 -- trumped his desire to put money in his own pocket because
8 the case got paid lots of money, like, six, seven figures that
9 went out to investigators, lawyers, trips to Guyana, expenses
10 related, buying transcript and the like, and at the end of the
11 day the trial was approaching and very little money, and don't
12 let them argue rebuttal because I can't participate every
13 argument, although I know what they will say we can't answer
14 every argument the defense raised. Well, consider the ones
15 that they do raise, but don't let the government argue that
16 his motive was -- just like the letter -- that there's no
17 proof it was sent out -- that if he wins the case, then Khan
18 will be more likely to pay him, but if he loses the case, then
19 he won't get paid, so his motive was the money. That's a
20 ridiculous argument for one reason. If the case were won
21 because Selwyn Vaughn went out there and won it -- he is the
22 one who would get the credit, not Simels, but there is no
23 basis in the record. That is the kind of argument that is
24 just you, know speculative, and another guess on their part,
25 as they have done with so much of this evidence, putting

Summation - Shargel

1855

1 things to together and saying -- and I'll get to one
2 particular one shortly -- putting things to together that has
3 no absolutely no basis in the record.

4 Now, I want to announce, so no one is wondering,
5 that I am going to be done by 5:30. All right?

6 THE COURT: Good. And then we will quit.

7 MR. SHARGEL: Got it. I want to move on to what the
8 government investigators described as the new plan.

9 You know that it was on July 9th when a call is made
10 -- when a call is made by Selwyn Vaughn to Simels. He leaves
11 the message. Doesn't meet with him until the 18th of July,
12 but he says I penetrated the heart of the case. I have
13 exciting news. So exciting Simels doesn't meet with him for
14 nine days and at the meeting -- it's been up there already, so
15 I won't put it up there again, the July 18th meeting Vaughn
16 says that Clarke is willing to play. And Bob Simels, as he
17 told you, he has a little hearing problem he says plea? No.
18 Play. So then Selwyn Vaughn says what's in it for him. He
19 wants to know.

20 Now, from July the 18th at this meeting through
21 September the federal investigators, and you have seen the
22 e-mail, were pushing, pushing for Bob Simels to pay some
23 money. They want to say this was a bribe. Bob Simels has
24 testified that this was a trick. It was no different than
25 what Tony Ricco had done at the Trenton State prison to

Summation - Shargel

1856

1 follow-up on what someone was blaming. Get some proof of it
2 and once you had the proof of it, then you would act on that
3 proof.

4 So the investigators are pressing Vaughn to ask
5 Simels for money. At the end of July there was a new plan.
6 This was -- can we have J 48. This is Mazzella's. This was
7 very interesting and very -- an idea. What if Fineman says
8 she doesn't want to come in. She will fill out affidavit and
9 notarize it, but she won't meet you until she's paid. What I
10 have been telling her is that -- this is what Vaughn is
11 supposed to say is that this stuff is what I want her to say
12 to you and -- Robert Simels -- meaning Fineman paid her. She
13 believes she will be saying these things and testifying to
14 this Bob Simels BS, and that I'm paying her. I didn't tell her
15 anything about you -- meaning Simels -- being involved. So
16 she wants half from me before she meets with you and then the
17 next thing we have is Selwyn Vaughn implementing the idea.

18 Next page or the testimony.

19 The testimony is that down there that at the meeting
20 Vaughn says he has an idea. The point is now that he is
21 making the investigator's idea his idea. You know? What the
22 idea is pretty good one from an investigator's standpoint.
23 The idea is an excellent idea. It's an excellent idea because
24 it informs the lawyer that he doesn't have to be at risk. He
25 could be in the background. In other words, give the money to

Summation - Shargel

1857

1 Fineman. Fineman he says never mentioned -- I never mentioned
2 your name. I never mentioned Roger's name. I never mentioned
3 your name. More appropriately Bob Simels -- I never
4 mentioned it to her, so if you give me the money and I get her
5 the money and get the affidavit, you are safe. You could be
6 behind the scenes.

7 Well, if Bob Simels were a criminal wouldn't that be
8 like a perfect solution? Wouldn't that idea be embraced? I
9 mean who wants to be involved in a bribe with a stranger. So
10 you, know what happens though? Bob Simels said no. Bob Simels
11 said absolutely not. And he refused. He absolutely refused to
12 give the money to Fineman, and insisted that he meet with
13 Leslyn Camacho. Insisted that he have that meeting.

14 Curious that that would be his plan, but what
15 happens after that really makes the point that Bob Simels
16 intended nothing but a trap or a ruse or sting operation.
17 Every single thing that happened after that shows that no
18 bribe was intended.

19 The events of September 10th. Let's recall them.
20 1:30 Leslyn Camacho supposed to come up to the office. 12:30,
21 an hour before, times are approximate, Bob Simels and Arienne
22 Irving are placed under arrest. Federal agents come into
23 their office and a search ensues, and what do they find? They
24 find some documents on the desk in the conference room. One
25 is an affidavit. It is a proposed affidavit. One. The second

Summation - Shargel

1858

1 is a subpoena. Remember the investigator -- one of the
2 investigators said one of the ways you can get people to talk
3 is through a subpoena. There's a subpoena. There's also on the
4 desk a check for \$40. There's also in the office a
5 tape-recorder. There's a memo. Did we put the memo up on the
6 screen. Arienne Irving memo. Highlight the part about --
7 first he says -- he told Leslyn Camacho is going to come see
8 us next week, and then R K, Roger Khan, wanted to know if we
9 could record Leslyn's meeting us with.

10 Well, pretty strange they are talking about
11 recording a meeting with a person who is about to receive a
12 bribe, an unlawful act in and of itself. And you know -- you
13 can take that off now. You know that there was a
14 tape-recorder. You saw a picture of tape-recorder in a desk
15 -- a working tape recorder and that's all.

16 (Continued on next page)

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Summation - Shargel

1859

1 MR. SHARGEL: (Continuing)

2 Now, you know, the -- the prosecutor,
3 Mr. D'Alessandro, points to \$2500 and says, there is \$2500.
4 There is \$2500 that was in the drawer and Mr. Simels explained
5 where that \$2500 came from. He explained that.

6 The \$2500 was not the Khan money. Because the money
7 in the drawer had the Post-it on the Rolex box. In order for
8 the Post-it to get on the Rolex box, I respectfully submit, it
9 had to be taken off something else and you know you have
10 evidence in here and you have bank information that's in
11 evidence that shows that on August the 28th, there had been
12 money from -- from Khan, \$25,000 in cash, that had been
13 properly deposited in the bank.

14 There was no \$5,000 in the office.

15 And we could even show the slide of the currency
16 transaction report, showing, if you read it, that on August
17 the 28th, there was -- on August the 28th there was that
18 deposit.

19 But you know something? The government also had
20 tapes from the MCC. Now, I want to talk to you about those
21 tapes. I want to talk to you about one tape in particular,
22 July 29, one portion of the tape on July 29, 2008, when
23 Mr. Simels visited the MCC and I would like to put the
24 transcript of that tape on the screen.

25 It is interesting. Our government can launch a

GR

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Summation - Shargel

1860

1 space shuttle but couldn't get a clear conversation, they
2 claim, of this MCC conversation.

3 So if you look at this and you go to this part at
4 26:08. Mr. Simels is speaking about, I have scheduled to go
5 down to see Saigo, one of the investigators, looking for
6 Saigo. He is talking obviously -- giving his client a report
7 about the investigation and the case.

8 Then Khan says, she has to lower the amount. She
9 has to lower the amount.

10 The government argues she is Leslyn and this is
11 about negotiating a lower price and therefore they wave the
12 \$2500 in front of you and claim that that's the \$2500.

13 Let's go to the next attribution.

14 Mr. Simels, after the -- immediately after, it's the
15 same time, sequence, at twenty-six minutes and eight seconds.
16 Mr. Simels says, hmm, in response to she has to lower the
17 amount.

18 Khan, she has to lower the amount. There will be
19 other days.

20 Simels, the very, very next attribution, you know I
21 wrote her a stinging letter.

22 He never wrote a letter to Leslyn Camacho. There
23 was never a letter written to Leslyn Camacho. No letter
24 exists. There are stinging letters to prosecutors. There are
25 stinging letters to the Court. But there were no stinging

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1 letters to Leslyn Camacho.

2 So the she has to lower the amount, Khan says twice,
3 and Simels reaction is, she -- you know I wrote her a stinging
4 letter. He is not talking about Leslyn Camacho.

5 Let's go further.

6 The government is putting this before you and
7 saying, I need money to sling at anything that Fineman tells
8 me is true. Unintelligible.

9 I am going to go out on a limb here. You will not
10 find the word "Leslyn" on that tape. You can listen to it
11 over and over again. You can listen to it to your heart's
12 content.

13 That word Leslyn -- I am not talking about the first
14 Leslyn on the top. I am talking about this Leslyn and line
15 five, you will not hear the name Leslyn. That's a bold
16 statement for a lawyer to make.

17 But I suggest to you, that you listen to it, without
18 the transcript. Because there is a certain power of
19 suggestion when you watch -- when you listen to it and you
20 read the words, that it can be suggested to you that you hear
21 something that you are not really hearing.

22 I noticed there are some among you, if not all of
23 you, who when I played the transcript -- I'm sorry -- when I
24 played the tape without the transcript, there were those among
25 you with eyes closed who were listening.

Summation - Shargel

1862

1 You can look at it with the transcript, if you wish.
2 But I ask you when you go back there, listen to it, or if you
3 have to come out here to do it, do it out here. Listen to it
4 without looking at this transcript. I submit to you, and as I
5 said a moment ago, it is a bold statement to make, that you
6 will not hear that second Leslyn. That thank Leslyn is to be
7 heard only in the ears of the government, something that they
8 wish to hear, something that they would like to hear. But
9 something that doesn't appear on that recorded conversation.

10 I am not going to play it now. Am I? No. Okay.

11 I couldn't be here without Evan Lipton.

12 I will not play it now but I leave that to you. I
13 think that's so crucially important because the government
14 made such a deal with it, that this is Leslyn.

15 Keep in mind the earlier attribution that -- that
16 the person has to lower the money or lower the amount, not
17 even the money. It doesn't even say the money. It says lower
18 the amount. It is not Leslyn Camacho.

19 There was no money for Leslyn Camacho that day. No
20 bribe was intended.

21 You know, here is something interesting. We are
22 getting to the gaping hole in the case. It is this. They say
23 there was a bribe and that Bob Simels intended to pay the
24 money. Let's talk about another natural experience --
25 experiment.

Summation - Shargel

1863

1 Bob Simels was intending to pay the money. We say
2 no. It wasn't a bribe. This was a sting operation. This was
3 a ruse. This was a trick to get her on tape, demanding money.

4 So you have the parties taking these two opposite
5 positions. Yes, they have the burden of proving it beyond a
6 reasonable doubt but I will go out on a further limb and say,
7 let's put that aside for the minute.

8 You have two people, two parties, to a lawsuit,
9 saying he intended to bribe. He said, I didn't intend to
10 bribe.

11 How do you resolve that? How could you resolve
12 that? Because ever since I came into the case, I couldn't and
13 can't stop thinking about this.

14 Bob Simels never met Leslyn Camacho. You have that
15 in the testimony.

16 Bob Simels never saw a picture of Leslyn Camacho.
17 Even Selwyn Vaughn couldn't identify her -- it's Government
18 Exhibit 15 -- Investigator Mazzella testified, couldn't
19 identify Camacho. He didn't know her. Never had seen her.

20 So here is my question. Why didn't they have an
21 undercover agent, again, investigative techniques, it's their
22 business, but you might want to think about wiggle room. Why
23 didn't they have some investigator, this meeting had
24 been -- wasn't an emergency meeting. It hadn't just been put
25 together. It had been planned for weeks. It had been

1 canceled and rescheduled, canceled and rescheduled. They had
2 all the time in the world. They chose the time when they
3 wanted to go and arrest Bob Simels.

4 Why couldn't they get an investigator to go in to
5 the office? If it didn't work they'd be in no worse position
6 than they are in now. You have a rebuttal summation here.
7 The government gets a rebuttal summation. Don't let them
8 forget about this one. Why don't they get an undercover
9 investigator to go in and say I am Leslyn. I'll sign the
10 affidavit. Give me the money. Or find out, find out whether
11 Bob Simels had it in mind to pay the money.

12 This is like turning off the television set right
13 before the end of the story. Because then you wouldn't have
14 to go back there in the jury room and start wondering. Did
15 they prove it, didn't they prove it. Yes, they have to prove
16 beyond a reasonable doubt but was he intending to pay it or
17 wasn't he intending to pay it? Which is it?

18 They would have had exquisite proof, if it were
19 true, which is it is not. They would have had exquisite proof
20 of this crime had they waited just a while longer. And there
21 is no reason on earth why they didn't try that.

22 I mean, if Bob Simels for some reason -- for some
23 reason was clairvoyant and said oh, you are not Leslyn
24 Camacho. Then okay. You are under arrest anyway because we
25 have all these tapes and so on. The same case that you heard

1 now.

2 So what could possibly be the reason for this gaping
3 hole, what could possibly be the reason why they wouldn't try
4 to make certain what Bob Simels had in mind?

5 Tape recorder argues against a bribe. The \$40 check
6 and the subpoena argue against the bribe.

7 Why wouldn't they have someone posing as an
8 undercover agent. They didn't have any problem with having
9 Vaughn pose as a loyalist of Roger Khan. They didn't have any
10 problem with that.

11 There was no shortage -- I don't think there is any
12 shortage in the DEA of undercover agents that might fit the
13 description of Leslyn Camacho.

14 Let me say this. This has been a long closing
15 argument. I recognize that. I recognize that. You know I
16 don't get a chance to get up again. You probably know enough
17 that I would like to, if I could but I can't.

18 Whoever Roger Khan was in Guyana, he was no
19 celebrity in the United States. This was not a celebrated
20 case. It's not the kind of case that pundits on TV appear on
21 the nightly news or Larry King and talk about it. It's low
22 profile in New York and in the United States. It's not the
23 kind of case that attracted widespread media attention.

24 But when Bob Simels was retained in August of 2006,
25 the case brought along with it a mighty challenge. It was a

1 mighty challenge but it was no different from the challenge
2 faced by any criminal defense lawyer in any other case.

3 Make certain that your client is not wrongfully
4 convicted. Make sure that the client's constitutional rights
5 are protected and enforced. Be the best lawyer you can be for
6 your client, whether he is from Georgetown, Guyana or the
7 Georgetown section of Washington, DC, it doesn't matter.

8 And that's what Bob Simels was doing. This is not a
9 case about disciplinary rules or proceedings before some bar
10 committee. This is about criminal law and whether there is
11 penal punishment. This is a case that's serious. This is a
12 case that says that Bob Simels didn't do what he was obligated
13 to do under the law.

14 My argument over the last couple of hours is that,
15 not so fast. Look at the evidence in this case. Look at the
16 evidence in this case. You will see that there is no support
17 for the proposition that Bob Simels intended to violate any
18 penal statute.

19 You know, you look at these charts. You look at
20 this chart again. You look at -- you look at the
21 circumstances of the case and what the government is saying.
22 But you know something? No matter who you are, no matter who
23 it is, everyone in this country is entitled to a defense. Not
24 just a defense, but is constitutionally entitled to effective,
25 a zealous defense. That's not some bar group law or rule,

1 ethical rule. That is what the Constitution says.

2 There may be those among you who say well, I
3 recognize that but I wouldn't want to do it or I wouldn't want
4 my husband or my wife to do it, my brother or my daughter to
5 do it.

6 Be that as it may. The fact is, that Bob Simels as
7 shown by the work that he was doing, as shown by the diligence
8 that he applied to this case, as shown by the fact that his
9 efforts were tireless, as shown by the fact that he was
10 willing to sacrifice not only money to put in his pocket but
11 his own safety in going to Guyana, Bob Simels was the kind of
12 lawyer that a lot of people would appreciate if he were
13 working for them should they find themselves charged with a
14 criminal offense.

15 (Continued on next page.)

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1 MR. SHARGEL: (Continuing) We don't want any bad
2 messages sent to lawyers to chill the enthusiasm required with
3 this kind of defense and this kind of work.

4 Ladies and gentlemen, a fair consideration of this
5 evidence -- oh, on its face the words are there. I'll end
6 where I began. The words are there, talking about this,
7 talking about that. Congress didn't draft a law that punished
8 words. It's more than words and more than words didn't
9 happen. Everything fell off its own weight, never went
10 anywhere, no different than Tony Ricco said to you, an
11 experienced lawyer, that this is a common occurrence, trash
12 talk. As I said in my opening statement, whatever you have to
13 call it, you have to listen to a lot of crap, Tony Ricco said,
14 but then you ultimately decide what is going to be submitted
15 to the court and not submitted to the court.

16 In the course of representing Roger Khan, there
17 wasn't one false document put before the judge. In the course
18 of representing Roger Khan, there wasn't one false statement
19 made in connection with that defense. In the course of
20 representing Roger Khan, there wasn't one stone that was not
21 turned. Bob Simels finds himself here after 35 years of
22 practice, a place he should not be. Thank you.

23 THE COURT: Thank you, Mr. Shargel. Before we
24 break for the night, one comment about what Mr. Shargel just
25 said to you at the end. I say this in anticipation of the

1 rebuttal summation tomorrow which will make no reference to
2 messages being sent. Your verdict -- this is a long day.
3 These are strongly felt arguments being made. With respect to
4 Mr. Shargel, your verdict will send no message to nobody.
5 Your mission in this case is to determine one thing, whether
6 the government has proven beyond a reasonable doubt the crime
7 you're considering against the defendant you're considering.
8 Lawsuits don't send messages elsewhere by people in other
9 arenas standing on soap boxes, but your verdict will not.

10 We'll break until tomorrow. Don't discuss the case.
11 We'll resume at 9:30. You'll hear brief rebuttal summation.
12 I'll instruct you on the law and you'll commence your
13 deliberations.

14 Don't discuss the case. Don't go looking on the
15 internet for information. Avoid any publicity.

16 By the way, has anybody seen any publicity or read
17 any articles since we last met? Raise your hand if you have.

18 Continue to be vigilant in that regard. Have a nice
19 evening, safe home. All rise.

20 (Jury leaves courtroom.)

21 THE COURT: Good night.

22 (Whereupon this matter concluded for this date.)
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\$	1745:14, 1827:25, 1828:1, 1836:15, 1836:19, 1836:25 12 ^[1] - 1659:19 12:30 ^[1] - 1857:20 12:50 ^[1] - 1752:10 12th ^[1] - 1745:14 13 ^[9] - 1652:19, 1685:17, 1705:8, 1725:16, 1727:14, 1729:8, 1729:9, 1768:8, 1810:5 13:43 ^[1] - 1754:25 13th ^[41] - 1649:1, 1652:8, 1667:18, 1668:19, 1669:8, 1669:22, 1671:19, 1671:22, 1679:18, 1679:21, 1723:19, 1725:21, 1725:22, 1725:23, 1726:10, 1727:2, 1727:5, 1738:4, 1738:21, 1741:12, 1744:11, 1744:12, 1744:25, 1748:24, 1751:10, 1751:12, 1751:22, 1752:11, 1752:18, 1753:12, 1757:22, 1759:2, 1764:22, 1769:16, 1775:12, 1785:4, 1785:5, 1809:23, 1835:20, 1835:23, 1838:13 14 ^[2] - 1687:16, 1803:20 140th ^[1] - 1703:15 1449 ^[1] - 1656:14 1475 ^[1] - 1658:17 1485 ^[1] - 1662:23 149th ^[1] - 1703:15 14th ^[2] - 1752:14, 1803:21 15 ^[13] - 1640:11, 1640:13, 1662:7, 1674:12, 1689:6, 1748:22, 1821:25, 1822:24, 1823:4, 1833:24, 1834:1, 1848:5, 1863:18 15,000 ^[1] - 1724:8 150 ^[1] - 1793:24 1564 ^[1] - 1748:21 1575 ^[1] - 1663:10 16 ^[2] - 1730:1, 1836:9 160 ^[1] - 1715:7 17 ^[4] - 1654:1, 1681:5, 1743:22, 1754:11 17th ^[2] - 1750:7, 1750:17 18 ^[6] - 1673:12, 1676:14, 1738:18, 1794:24, 1795:1 18th ^[20] - 1662:6, 1663:14, 1663:16, 1706:20, 1707:15, 1707:16, 1707:20, 1708:8, 1708:9, 1719:10, 1758:24, 1759:1, 1760:12, 1763:17, 1820:8, 1840:22, 1855:11, 1855:15, 1855:20 19 ^[1] - 1809:17 19th ^[3] - 1752:15, 1770:15, 1770:19 1:30 ^[1] - 1857:20 1st ^[1] - 1794:1	2002 ^[3] - 1667:22, 1719:12, 1801:2 2003 ^[2] - 1727:21, 1733:20 2004 ^[2] - 1667:23, 1801:2 2005 ^[3] - 1667:24, 1728:2, 1728:16 2006 ^[5] - 1789:12, 1809:22, 1810:3, 1840:21, 1865:24 2007 ^[12] - 1685:17, 1686:20, 1686:21, 1686:22, 1716:10, 1716:21, 1720:3, 1761:24, 1775:12, 1802:4, 1806:16, 1851:6 2008 ^[57] - 1662:1, 1662:6, 1663:1, 1671:19, 1671:22, 1673:1, 1673:21, 1678:18, 1679:9, 1679:18, 1679:19, 1679:21, 1680:10, 1681:5, 1683:23, 1687:4, 1697:9, 1700:2, 1700:5, 1703:10, 1704:16, 1707:7, 1707:15, 1707:20, 1708:12, 1710:15, 1710:22, 1713:17, 1713:20, 1713:23, 1717:18, 1717:23, 1717:24, 1719:10, 1741:25, 1770:15, 1784:3, 1784:21, 1788:8, 1789:13, 1792:9, 1793:25, 1794:1, 1803:8, 1803:22, 1805:19, 1808:20, 1810:5, 1820:8, 1822:1, 1822:14, 1843:9, 1844:3, 1851:6, 1852:19, 1859:22 2009 ^[1] - 1639:6 208 ^[1] - 1752:1 20th ^[24] - 1654:1, 1670:24, 1674:6, 1676:10, 1676:13, 1678:21, 1679:9, 1679:19, 1683:23, 1698:12, 1707:7, 1716:25, 1717:9, 1719:8, 1744:16, 1744:24, 1754:3, 1754:11, 1759:3, 1763:15, 1764:18, 1771:1, 1839:24, 1839:25 213 ^[1] - 1764:14 216 ^[1] - 1767:24 22 ^[2] - 1727:20, 1750:18 225 ^[1] - 1639:22 22nd ^[1] - 1835:25 23 ^[2] - 1659:12, 1731:9 23rd ^[1] - 1717:10 24 ^[1] - 1703:19 24th ^[3] - 1708:12, 1766:11, 1766:12 25 ^[4] - 1654:1, 1698:13, 1742:23, 1751:7 25th ^[1] - 1717:18 26 ^[3] - 1687:14, 1703:17, 1788:16 26:08 ^[1] - 1860:4 26th ^[2] - 1717:23, 1717:24 27 ^[5] - 1713:20, 1729:9, 1731:9, 1792:9, 1793:25 2700 ^[1] - 1830:4 27th ^[5] - 1713:17, 1713:23, 1770:20, 1792:8, 1809:25 28 ^[2] - 1672:24, 1731:25 28th ^[3] - 1859:11, 1859:17 29 ^[6] - 1678:1, 1690:10, 1733:4, 1736:5, 1859:22 29-year ^[1] - 1773:21 29th ^[3] - 1766:19, 1836:6, 1836:10
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'08 ^[2] - 1679:7		
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06 ^[1] - 1801:3 08 ^[1] - 1852:8 08-CR-640 ^[1] - 1639:3		
1		
1 ^[2] - 1659:18, 1690:18 1,000 ^[1] - 1839:15 10 ^[1] - 1639:6 10,000 ^[3] - 1661:9, 1661:13, 1706:4 100 ^[5] - 1723:17, 1736:24, 1750:6, 1754:7, 1756:7 1015 ^[1] - 1738:18 1042 ^[1] - 1768:7 1051 ^[1] - 1765:5 1061 ^[1] - 1767:4 10:55 ^[1] - 1679:19 10th ^[9] - 1753:16, 1753:18, 1808:20, 1838:13, 1838:25, 1839:1, 1839:2, 1852:20, 1857:19 11 ^[5] - 1679:9, 1680:10, 1727:14, 1727:20, 1728:19 11201 ^[1] - 1639:23 1193 ^[1] - 1814:16 11th ^[25] - 1652:19, 1661:25, 1663:1, 1673:1, 1673:20, 1674:13, 1676:4, 1676:5, 1676:6, 1676:9, 1676:11, 1678:18, 1679:18, 1716:10, 1726:12, 1741:24, 1742:3, 1742:14, 1742:23,	2 2 ^[1] - 1659:19 20 ^[3] - 1689:20, 1697:9, 1704:16 20,000 ^[2] - 1661:9, 1706:4 200 ^[3] - 1690:18, 1751:16, 1770:8	

2:00 [1] - 1755:1	55 [2] - 1678:1 554 [1] - 1671:19 564 [1] - 1679:20 57 [1] - 1674:12 5:00 [4] - 1800:10, 1833:6, 1834:4 5:30 [3] - 1799:3, 1799:23, 1855:5 5th [1] - 1710:15	1723:20, 1725:9, 1726:16, 1733:22, 1736:24, 1738:15, 1742:15, 1743:18, 1750:5, 1755:13, 1756:7, 1762:17, 1762:23, 1765:16, 1774:11, 1789:5, 1789:17, 1805:24, 1805:25, 1821:22, 1821:23, 1835:8, 1855:3, 1857:11 accent [2] - 1715:8, 1718:12 accept [1] - 1686:12 accident [1] - 1833:25 accomplish [1] - 1853:17 accordance [3] - 1789:1, 1794:8, 1794:10 according [3] - 1663:20, 1700:14, 1820:11 account [3] - 1717:15, 1795:17, 1795:23 accountable [2] - 1731:19, 1755:18 accounting [2] - 1683:11, 1821:16 accuracy [1] - 1701:20 accurate [1] - 1850:1 achieve [1] - 1713:1 achieved [2] - 1644:9, 1681:21 achieving [2] - 1712:7 act [6] - 1707:14, 1711:13, 1764:8, 1776:1, 1856:2, 1858:12 acted [2] - 1794:8, 1794:9 acting [3] - 1784:24, 1803:25, 1825:6 action [2] - 1643:24, 1846:10 actions [3] - 1642:15, 1708:1, 1708:5 activities [3] - 1702:14, 1702:17, 1796:10 activity [2] - 1702:5, 1835:9 acts [11] - 1645:5, 1648:15, 1651:25, 1677:8, 1678:7, 1702:1, 1704:21, 1728:17, 1728:25, 1831:13 actual [3] - 1689:22, 1738:20, 1782:24 Adams [1] - 1787:9 add [1] - 1820:1 addition [1] - 1804:10 address [17] - 1647:15, 1647:16, 1647:17, 1647:21, 1687:9, 1690:12, 1703:8, 1717:16, 1722:25, 1743:2, 1743:5, 1743:14, 1770:1, 1775:3, 1790:18, 1790:19 addresses [3] - 1674:6, 1757:2, 1818:13 adequate [1] - 1831:19 Administration [1] - 1697:17 admissible [4] - 1805:9, 1805:15, 1831:13 admit [11] - 1648:10, 1651:24, 1654:13, 1654:16, 1661:21, 1666:8, 1673:13, 1817:1, 1837:1, 1837:2 admits [1] - 1832:18 admitted [5] - 1647:2, 1805:5, 1820:20, 1832:13, 1840:21 admitting [1] - 1820:18 advance [1] - 1772:1 advantage [1] - 1688:3 advertised [1] - 1831:7
3	6	
30 [9] - 1668:13, 1700:2, 1700:5, 1728:19, 1742:23, 1760:8, 1794:17, 1799:25, 1837:11 300 [1] - 1770:8 304 [1] - 1708:25 306 [1] - 1784:2 306A [1] - 1784:3 308 [1] - 1804:7 30th [10] - 1664:17, 1687:4, 1687:6, 1690:7, 1757:7, 1765:17, 1765:19, 1766:13, 1766:24 31 [2] - 1800:4, 1820:3 31st [2] - 1690:9, 1852:20 32 [2] - 1687:14, 1743:21 329 [1] - 1812:23 33 [1] - 1654:4 34 [2] - 1716:17, 1754:12 35 [4] - 1681:10, 1774:5, 1788:17, 1868:21 3500 [1] - 1820:3 3500-SV-31 [4] - 1662:5, 1662:23, 1663:11, 1670:11 3700 [2] - 1789:11, 1850:7 38 [1] - 1673:20	60 [1] - 1715:7 601 [1] - 1716:9 602 [2] - 1717:17, 1761:9 608 [1] - 1831:13 613-2538 [1] - 1639:23 62 [1] - 1853:23 6th [1] - 1838:12	
	7	
	700 [3] - 1713:22, 1714:3, 1714:20 703 [1] - 1679:17 704 [1] - 1708:8 705 [1] - 1679:4 718 [1] - 1639:23 7:30 [1] - 1833:6	
	8	
4	8 [1] - 1672:24 803 [3] - 1690:11, 1692:1, 1699:15 804 [3] - 1716:23, 1754:23, 1758:10 807 [1] - 1770:14 810 [2] - 1685:15, 1775:9 886 [1] - 1736:11 8th [3] - 1720:2, 1761:24, 1764:1	
4 [1] - 1784:21 40 [2] - 1676:13, 1760:8 401-T-3 [2] - 1649:1, 1652:7 404(b) [1] - 1671:23 44 [1] - 1681:12 45 [3] - 1691:13, 1740:5, 1799:16 46 [2] - 1705:6, 1705:7 47 [2] - 1687:14, 1687:17 48 [1] - 1856:6 4:00 [1] - 1835:23 4:30 [1] - 1800:10	9	
	9 [1] - 1784:3 90 [3] - 1799:5, 1799:6, 1838:5 90th [1] - 1775:19 9:30 [2] - 1639:6, 1869:11 9th [1] - 1855:9	
5	A	
5 [2] - 1703:10, 1834:4 5,000 [5] - 1661:9, 1661:13, 1706:3, 1706:21 5-6 [1] - 1715:6 50 [3] - 1673:20, 1715:7, 1737:10 502 [1] - 1690:13 505 [1] - 1733:14 513 [1] - 1710:21 532 [1] - 1720:2 538 [1] - 1710:13 54 [2] - 1705:6, 1705:7 541 [1] - 1701:17	a.m [1] - 1639:6 able [10] - 1674:19, 1709:13, 1719:24, 1768:4, 1785:14, 1802:16, 1802:24, 1805:5, 1818:21, 1832:3 absence [6] - 1640:1, 1691:2, 1691:6, 1741:2, 1798:15, 1798:21 absent [1] - 1821:12 absolutely [3] - 1654:20, 1711:2, 1715:21, 1720:25, 1722:11, 1723:17,	

<p>advised [1] - 1784:4</p> <p>affidavit [33] - 1700:17, 1700:19, 1701:16, 1701:17, 1701:19, 1706:25, 1707:17, 1708:25, 1709:6, 1709:11, 1709:21, 1709:25, 1710:19, 1710:23, 1710:24, 1711:1, 1712:21, 1826:10, 1842:14, 1842:15, 1843:11, 1843:20, 1844:9, 1848:5, 1850:16, 1850:21, 1856:8, 1857:5, 1857:25, 1864:10</p> <p>affidavits [1] - 1712:19</p> <p>affirmation [1] - 1848:6</p> <p>afraid [9] - 1686:25, 1687:23, 1697:3, 1697:23, 1698:3, 1698:10, 1732:4, 1735:20</p> <p>afternoon [3] - 1721:13, 1741:10, 1836:6</p> <p>afterwards [3] - 1649:23, 1689:19, 1690:8</p> <p>aged [1] - 1715:7</p> <p>agency [1] - 1839:3</p> <p>Agent [9] - 1760:20, 1760:23, 1827:23, 1828:2, 1828:6, 1833:23, 1833:24, 1834:15, 1834:16</p> <p>agent [7] - 1731:3, 1760:17, 1788:17, 1809:16, 1834:17, 1863:21, 1865:8</p> <p>agents [3] - 1818:21, 1857:22, 1865:12</p> <p>aggressive [1] - 1789:4</p> <p>ago [10] - 1707:22, 1719:7, 1721:14, 1745:2, 1777:24, 1783:23, 1822:13, 1839:5, 1844:11, 1862:5</p> <p>agree [12] - 1658:13, 1658:16, 1659:13, 1659:14, 1659:23, 1696:2, 1711:23, 1853:18</p> <p>agreed [3] - 1784:6, 1786:21, 1843:21</p> <p>agreeing [3] - 1658:18, 1840:4, 1842:3</p> <p>agreement [2] - 1711:12, 1711:14</p> <p>ahead [3] - 1642:6, 1647:14, 1776:5</p> <p>ahold [1] - 1700:18</p> <p>AI [1] - 1690:14</p> <p>aid [1] - 1849:19</p> <p>air [1] - 1810:9</p> <p>aka [2] - 1687:8, 1785:1</p> <p>Alabama [1] - 1844:15</p> <p>alcohol [1] - 1707:5</p> <p>Alicia [30] - 1667:2, 1677:22, 1678:10, 1679:1, 1680:24, 1683:5, 1685:12, 1685:23, 1702:24, 1702:25, 1703:2, 1703:3, 1703:4, 1703:5, 1704:22, 1746:2, 1785:24, 1822:7, 1826:19, 1841:6, 1841:9, 1841:15, 1844:10, 1845:17, 1847:10, 1852:10</p> <p>allegation [2] - 1769:17, 1783:18</p> <p>alleged [1] - 1784:13</p> <p>Allison [30] - 1645:8, 1645:15, 1646:12, 1649:6, 1649:7, 1649:14, 1649:18, 1649:21, 1651:6, 1666:25, 1677:11, 1677:12, 1680:21, 1682:18, 1682:24, 1682:25, 1704:22, 1746:1, 1754:6, 1816:10, 1816:19, 1826:9,</p>	<p>1829:16, 1830:2, 1832:20, 1832:21, 1832:25, 1837:4, 1847:18, 1847:19</p> <p>Allison's [1] - 1829:17</p> <p>allow [3] - 1641:25, 1700:23, 1709:8</p> <p>allowed [3] - 1733:6, 1733:9, 1736:15</p> <p>allowing [1] - 1785:12</p> <p>allows [3] - 1811:7, 1811:8, 1811:12</p> <p>almost [4] - 1688:7, 1769:8, 1790:8, 1805:6</p> <p>alone [11] - 1707:14, 1713:11, 1745:2, 1745:17, 1774:22, 1774:23, 1780:3, 1781:7, 1796:18, 1831:17</p> <p>amazing [3] - 1700:23, 1701:4</p> <p>AMERICA [1] - 1639:3</p> <p>America [6] - 1668:9, 1699:16, 1843:13, 1843:24, 1844:4, 1846:2</p> <p>ammunition [4] - 1646:25, 1671:2, 1853:13, 1853:14</p> <p>amnesia [4] - 1674:25, 1675:1, 1676:12, 1824:13</p> <p>amount [11] - 1686:17, 1706:12, 1780:4, 1780:10, 1860:8, 1860:9, 1860:17, 1860:18, 1861:2, 1862:16, 1862:18</p> <p>analyze [1] - 1814:5</p> <p>analyzing [1] - 1814:7</p> <p>Anand [1] - 1690:1</p> <p>announce [2] - 1773:12, 1855:4</p> <p>anonymous [1] - 1753:5</p> <p>ANSWER [3] - 1659:2, 1765:9, 1768:11</p> <p>Answer [2] - 1738:22, 1739:1</p> <p>answer [38] - 1648:17, 1655:19, 1655:20, 1656:7, 1656:23, 1658:3, 1658:21, 1660:21, 1661:7, 1661:14, 1661:19, 1663:2, 1666:6, 1715:11, 1715:12, 1728:18, 1730:7, 1730:10, 1733:9, 1736:14, 1736:17, 1749:1, 1749:4, 1764:10, 1797:2, 1798:17, 1805:24, 1811:15, 1811:16, 1812:25, 1813:7, 1813:11, 1828:22, 1833:24, 1847:24, 1848:2, 1854:13</p> <p>answered [1] - 1729:25</p> <p>answers [12] - 1731:20, 1746:6, 1748:8, 1748:12, 1753:17, 1764:5, 1764:10, 1831:25, 1847:21, 1847:24, 1847:25</p> <p>antennas [1] - 1803:5</p> <p>Anthony [1] - 1664:21</p> <p>anticipate [4] - 1655:1, 1667:10, 1711:11, 1712:5</p> <p>anticipation [1] - 1868:25</p> <p>anyway [3] - 1764:12, 1827:23, 1864:24</p> <p>apart [2] - 1682:6, 1753:15</p> <p>apartment [1] - 1829:17</p> <p>appear [4] - 1661:3, 1702:15, 1862:9, 1865:20</p> <p>APPEARANCES [1] - 1639:11</p> <p>application [3] - 1733:3, 1733:13,</p>	<p>1837:10</p> <p>applied [1] - 1867:8</p> <p>applies [1] - 1846:2</p> <p>apply [4] - 1642:20, 1666:20, 1715:23, 1720:25</p> <p>appointments [1] - 1821:13</p> <p>Appolo [1] - 1790:23</p> <p>appreciate [1] - 1867:12</p> <p>apprised [1] - 1840:16</p> <p>approach [7] - 1674:8, 1686:19, 1696:11, 1753:9, 1764:16, 1773:10</p> <p>approaching [1] - 1854:11</p> <p>appropriate [4] - 1784:8, 1789:2, 1810:1, 1816:14</p> <p>appropriately [1] - 1857:3</p> <p>approved [3] - 1796:24, 1796:25, 1797:1</p> <p>approximate [1] - 1857:21</p> <p>April [3] - 1794:1, 1812:6, 1812:7</p> <p>area [1] - 1715:16</p> <p>areas [1] - 1777:15</p> <p>arenas [1] - 1869:9</p> <p>argue [8] - 1641:16, 1641:19, 1779:2, 1791:11, 1795:16, 1854:12, 1854:15, 1865:6</p> <p>argues [2] - 1860:10, 1865:5</p> <p>arguing [2] - 1782:21, 1849:4</p> <p>argument [11] - 1775:5, 1781:3, 1828:1, 1848:3, 1854:13, 1854:14, 1854:20, 1854:23, 1865:15, 1866:14</p> <p>arguments [7] - 1641:7, 1641:13, 1641:14, 1681:22, 1779:2, 1848:5, 1869:3</p> <p>ARIENNE [1] - 1639:6</p> <p>Arienne [123] - 1639:20, 1642:13, 1644:10, 1646:14, 1664:15, 1666:22, 1671:20, 1671:21, 1679:15, 1679:19, 1679:22, 1681:1, 1681:2, 1681:6, 1687:5, 1689:12, 1690:9, 1690:14, 1692:1, 1708:6, 1708:12, 1710:12, 1710:14, 1710:20, 1711:20, 1711:21, 1712:14, 1716:24, 1717:23, 1720:2, 1723:5, 1723:6, 1723:9, 1726:2, 1726:11, 1727:4, 1727:7, 1730:1, 1730:17, 1730:23, 1732:21, 1734:24, 1735:3, 1735:23, 1737:2, 1737:9, 1737:16, 1737:24, 1738:4, 1741:13, 1742:1, 1742:9, 1742:15, 1742:21, 1742:25, 1744:12, 1745:3, 1745:6, 1745:7, 1745:13, 1745:19, 1746:4, 1749:5, 1749:6, 1750:9, 1750:10, 1750:11, 1750:14, 1750:19, 1751:7, 1753:22, 1753:24, 1753:25, 1754:7, 1754:19, 1755:6, 1755:9, 1756:10, 1756:23, 1757:1, 1757:12, 1758:1, 1758:4, 1759:15, 1760:11, 1761:13, 1761:14, 1762:2, 1762:18, 1763:15, 1763:17, 1763:18, 1764:2, 1764:19, 1765:19, 1766:13, 1767:19, 1767:24, 1768:7, 1768:21, 1769:21, 1770:3,</p>
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<p>1771:20, 1771:25, 1772:6, 1772:16, 1773:20, 1774:11, 1783:16, 1783:20, 1789:10, 1789:22, 1790:2, 1792:3, 1792:4, 1809:3, 1852:1, 1853:19, 1857:21, 1858:6</p> <p>Arienne's [3] - 1723:2, 1725:14, 1784:18</p> <p>armed [2] - 1746:8, 1760:20</p> <p>arrange [2] - 1791:16, 1836:19</p> <p>arrangement [1] - 1825:21</p> <p>arrest [9] - 1730:12, 1789:12, 1808:21, 1838:25, 1849:5, 1849:18, 1857:22, 1864:3, 1864:24</p> <p>arrested [7] - 1687:24, 1710:22, 1719:11, 1801:3, 1838:14, 1843:6, 1853:3</p> <p>arrival [1] - 1786:23</p> <p>arrive [1] - 1727:9</p> <p>articles [1] - 1869:17</p> <p>aside [1] - 1863:7</p> <p>Assassin [1] - 1647:21</p> <p>assassin [3] - 1701:10, 1790:18, 1790:23</p> <p>assassins [2] - 1648:21, 1654:9</p> <p>assertions [1] - 1841:18</p> <p>assess [1] - 1724:6</p> <p>assessment [1] - 1828:6</p> <p>assignment [3] - 1765:10, 1782:16, 1833:8</p> <p>assignments [1] - 1853:8</p> <p>assigns [1] - 1761:18</p> <p>assistance [2] - 1644:8, 1768:13</p> <p>Assistant [1] - 1639:15</p> <p>assistant [1] - 1794:4</p> <p>assisting [1] - 1645:8</p> <p>associate [2] - 1722:2, 1743:12</p> <p>associated [2] - 1702:10, 1791:14</p> <p>associates [4] - 1712:16, 1729:13, 1734:14, 1765:15</p> <p>assume [3] - 1661:14, 1661:15, 1752:11</p> <p>assure [2] - 1708:20, 1792:2</p> <p>assured [1] - 1708:20</p> <p>attempt [18] - 1640:16, 1712:5, 1712:6, 1713:8, 1722:5, 1772:18, 1779:13, 1780:4, 1780:6, 1780:10, 1781:5, 1781:14, 1783:11, 1784:12, 1824:18, 1845:22</p> <p>attempted [1] - 1779:13</p> <p>attempting [1] - 1806:21</p> <p>attempts [2] - 1686:12, 1823:17</p> <p>attention [7] - 1722:15, 1722:16, 1722:21, 1773:15, 1812:4, 1818:24, 1865:23</p> <p>attesting [1] - 1701:18</p> <p>attic [1] - 1701:8</p> <p>Attorney [1] - 1639:13</p> <p>attorney [32] - 1644:17, 1653:13, 1653:14, 1662:7, 1663:25, 1664:18, 1664:19, 1664:23, 1665:3, 1665:6,</p>	<p>1665:7, 1665:14, 1687:12, 1701:20, 1708:11, 1714:4, 1714:23, 1715:10, 1717:23, 1736:4, 1736:13, 1768:5, 1768:14, 1768:18, 1768:21, 1768:23, 1773:21, 1793:2, 1794:4, 1794:23</p> <p>Attorney's [2] - 1808:7, 1849:10</p> <p>attorneys [5] - 1643:4, 1662:4, 1665:6, 1714:6, 1736:15</p> <p>Attorneys [1] - 1639:15</p> <p>attracted [1] - 1865:23</p> <p>attribution [3] - 1860:13, 1860:20, 1862:15</p> <p>audible [1] - 1821:17</p> <p>Audio [1] - 1673:2</p> <p>audio [5] - 1659:20, 1660:6, 1672:25, 1673:22, 1674:14</p> <p>August [14] - 1639:6, 1690:18, 1694:10, 1703:10, 1789:12, 1809:22, 1810:3, 1825:17, 1840:21, 1853:2, 1859:11, 1859:16, 1859:17, 1865:24</p> <p>authenticate [2] - 1683:14, 1683:16</p> <p>authorization [1] - 1752:6</p> <p>automatically [1] - 1840:6</p> <p>available [4] - 1674:20, 1706:5, 1797:2, 1804:16</p> <p>Avenue [1] - 1703:14</p> <p>avoid [3] - 1686:3, 1787:13, 1869:15</p> <p>awaiting [1] - 1751:18</p> <p>awhile [1] - 1814:24</p>	<p>1719:17, 1719:22, 1720:16, 1758:9, 1758:17, 1758:18, 1758:19, 1759:16, 1761:15, 1762:16, 1805:17, 1806:3, 1806:8, 1806:11, 1809:4, 1809:7</p> <p>based [6] - 1682:3, 1719:23, 1726:24, 1744:13, 1760:11, 1772:13</p> <p>basement [1] - 1701:8</p> <p>bases [1] - 1803:4</p> <p>basis [7] - 1725:23, 1741:18, 1808:22, 1843:22, 1850:5, 1854:23, 1855:3</p> <p>bat [1] - 1711:1</p> <p>batteries [1] - 1760:10</p> <p>battery [3] - 1759:21, 1760:19</p> <p>bears [1] - 1641:24</p> <p>beat [1] - 1643:2</p> <p>beautiful [2] - 1710:7</p> <p>became [2] - 1643:4, 1704:15</p> <p>because's [1] - 1677:3</p> <p>become [1] - 1801:9</p> <p>becomes [4] - 1709:12, 1777:17, 1808:22, 1814:25</p> <p>bed [2] - 1801:20, 1836:21</p> <p>beep [2] - 1697:25</p> <p>BEFORE [1] - 1639:9</p> <p>beforehand [2] - 1766:7, 1817:25</p> <p>began [3] - 1792:3, 1810:4, 1868:6</p> <p>begin [1] - 1742:23</p> <p>beginning [13] - 1663:1, 1719:11, 1726:4, 1734:20, 1745:1, 1756:5, 1764:15, 1773:22, 1776:25, 1777:12, 1780:13, 1791:22, 1840:20</p> <p>begins [1] - 1662:1</p> <p>behalf [7] - 1641:21, 1641:22, 1666:18, 1722:15, 1822:20, 1851:16</p> <p>behind [4] - 1676:24, 1776:5, 1827:22, 1857:6</p> <p>behold [1] - 1802:18</p> <p>Belfield [12] - 1646:4, 1646:11, 1646:19, 1647:23, 1651:1, 1651:4, 1651:13, 1652:14, 1653:1, 1653:12, 1689:13, 1695:17</p> <p>belief [8] - 1723:12, 1723:13, 1733:23, 1741:18, 1741:23, 1757:16, 1822:22, 1847:14</p> <p>believes [7] - 1731:21, 1731:22, 1748:6, 1752:19, 1798:7, 1820:14, 1856:13</p> <p>bell [1] - 1775:8</p> <p>Belfield [6] - 1711:22, 1790:15, 1847:17, 1848:1, 1848:18, 1848:21</p> <p>belonging [1] - 1787:7</p> <p>below [3] - 1707:22, 1707:23, 1796:20</p> <p>benches [1] - 1691:8</p> <p>beneath [1] - 1832:11</p> <p>benefit [2] - 1798:2, 1798:3</p> <p>BENTON [1] - 1639:13</p> <p>BERG [1] - 1639:20</p> <p>best [12] - 1686:6, 1696:10, 1708:22, 1717:8, 1741:25, 1742:2, 1745:3, 1749:10, 1764:19, 1768:10, 1841:4,</p>
B		
<p>background [2] - 1824:10, 1856:25</p> <p>Backup [2] - 1646:19, 1651:1</p> <p>bad [31] - 1650:11, 1668:5, 1670:7, 1677:13, 1677:17, 1677:18, 1680:22, 1680:25, 1682:22, 1684:14, 1698:4, 1708:15, 1724:22, 1724:23, 1726:2, 1739:19, 1759:2, 1770:18, 1770:24, 1771:3, 1776:1, 1789:19, 1791:17, 1791:18, 1794:16, 1810:12, 1825:6, 1831:13, 1853:14, 1868:1</p> <p>balance [1] - 1720:10</p> <p>bald [1] - 1714:11</p> <p>ballpark [1] - 1740:3</p> <p>band [3] - 1676:12, 1745:21, 1747:7</p> <p>bank [2] - 1859:10, 1859:13</p> <p>Banks [6] - 1812:13, 1812:14, 1812:19, 1813:1, 1813:2</p> <p>bar [3] - 1837:6, 1866:9, 1866:25</p> <p>barely [2] - 1782:19, 1839:6</p> <p>barometer [2] - 1825:1, 1825:5</p> <p>Barry [7] - 1645:21, 1647:19, 1684:1, 1685:2, 1693:5, 1711:22</p> <p>bars [1] - 1832:4</p> <p>base [34] - 1716:2, 1716:23, 1717:4, 1717:6, 1717:13, 1717:14, 1717:16, 1717:20, 1717:25, 1718:15, 1718:16, 1718:18, 1718:19, 1718:21, 1718:22,</p>		

<p>1866:5 bets [1] - 1791:3 better [8] - 1694:9, 1696:18, 1708:1, 1708:5, 1748:4, 1790:24, 1825:13, 1849:16 between [24] - 1642:2, 1649:2, 1657:3, 1658:2, 1659:23, 1679:9, 1679:18, 1691:23, 1694:10, 1700:5, 1703:2, 1708:9, 1710:14, 1711:12, 1716:24, 1719:8, 1733:15, 1738:16, 1742:18, 1759:2, 1777:18, 1789:11, 1799:5 beyond [21] - 1641:25, 1661:4, 1661:5, 1722:6, 1746:9, 1756:24, 1766:23, 1769:24, 1770:5, 1771:19, 1772:10, 1772:22, 1773:7, 1780:24, 1829:7, 1846:6, 1863:5, 1864:16, 1869:6 big [7] - 1669:9, 1686:17, 1687:21, 1687:25, 1697:23, 1759:21, 1826:7 bigger [1] - 1834:21 biggest [3] - 1746:7, 1750:11, 1775:10 billing [1] - 1850:4 bills [1] - 1724:12 binder [1] - 1782:5 birth [3] - 1647:19, 1849:7, 1849:9 bit [7] - 1647:10, 1665:20, 1744:7, 1804:25, 1824:23, 1838:8, 1838:9 black [1] - 1777:5 Black [1] - 1792:11 blaming [1] - 1856:1 blind [1] - 1710:6 blithely [1] - 1816:12 block [1] - 1772:20 blond [1] - 1795:22 bloody [1] - 1841:19 bluffing [1] - 1767:18 board [2] - 1820:2, 1848:4 Bob [139] - 1775:13, 1775:19, 1781:5, 1781:20, 1782:5, 1783:2, 1783:5, 1783:11, 1783:18, 1785:21, 1785:22, 1786:3, 1787:14, 1787:15, 1787:20, 1788:1, 1788:6, 1788:8, 1788:23, 1789:4, 1789:6, 1789:10, 1789:14, 1789:22, 1790:6, 1790:19, 1790:20, 1792:12, 1792:16, 1792:20, 1793:7, 1793:10, 1796:18, 1796:20, 1801:1, 1801:22, 1802:1, 1803:25, 1804:23, 1809:25, 1810:7, 1810:10, 1814:1, 1814:5, 1815:4, 1815:9, 1815:10, 1815:19, 1816:21, 1817:14, 1818:2, 1818:10, 1819:6, 1821:1, 1821:4, 1821:21, 1823:2, 1823:3, 1823:5, 1824:10, 1824:14, 1826:16, 1826:25, 1827:5, 1827:6, 1827:10, 1829:22, 1829:23, 1831:6, 1831:23, 1835:4, 1835:16, 1836:20, 1838:15, 1839:4, 1839:25, 1840:2, 1840:4, 1840:7, 1840:16, 1840:20, 1840:24, 1840:25, 1841:8, 1841:25, 1842:6, 1842:14, 1842:15, 1842:17, 1842:23, 1844:11, 1844:15, 1844:17, 1844:22, 1845:14,</p>	<p>1845:20, 1845:25, 1846:8, 1846:16, 1846:20, 1849:12, 1849:24, 1850:17, 1850:22, 1851:6, 1851:20, 1852:1, 1853:1, 1853:9, 1853:10, 1853:21, 1854:5, 1855:16, 1855:22, 1855:23, 1856:14, 1857:3, 1857:7, 1857:10, 1857:15, 1857:21, 1862:23, 1863:1, 1863:14, 1863:16, 1864:3, 1864:11, 1864:22, 1865:4, 1865:24, 1866:8, 1866:12, 1866:17, 1867:6, 1867:11, 1868:21 bodies [1] - 1645:14 body [2] - 1810:7, 1810:8 bold [2] - 1861:15, 1862:5 bomb [3] - 1724:20, 1724:23, 1725:3 bomb-making [1] - 1724:20 bombs [3] - 1724:21, 1724:22, 1833:3 bona [3] - 1788:25, 1823:18, 1845:5 bonafide [1] - 1787:20 boni [1] - 1781:9 bonus [1] - 1854:3 book [1] - 1790:18 bookkeeper [1] - 1850:9 Books [1] - 1802:7 books [2] - 1683:11, 1802:6 bore [2] - 1838:8, 1838:9 boring [1] - 1722:18 boss [24] - 1644:3, 1650:9, 1654:16, 1662:19, 1667:17, 1668:2, 1668:17, 1669:8, 1669:15, 1669:17, 1669:18, 1670:22, 1671:8, 1681:3, 1711:25, 1712:10, 1728:2, 1729:16, 1769:1, 1787:5, 1794:5, 1794:12, 1839:22 boss's [3] - 1644:1, 1773:3, 1773:5 bothering [1] - 1695:19 bottom [6] - 1725:2, 1739:8, 1778:7, 1805:3, 1827:14, 1839:17 bought [2] - 1674:22, 1674:23 bounds [1] - 1778:11 box [2] - 1859:7, 1859:8 boxes [1] - 1869:9 boxing [1] - 1832:21 boys [1] - 1829:18 Brazil [1] - 1647:1 Brazilian [2] - 1703:14, 1703:19 bread [1] - 1851:22 break [21] - 1642:10, 1642:22, 1644:23, 1673:25, 1688:6, 1690:20, 1690:24, 1691:20, 1739:22, 1739:24, 1794:17, 1798:7, 1798:8, 1798:10, 1798:11, 1799:20, 1800:10, 1800:16, 1837:11, 1868:24, 1869:10 breaking [2] - 1688:5, 1739:22 Brian [3] - 1686:8, 1759:9, 1759:12 bribe [10] - 1855:23, 1857:9, 1857:18, 1862:20, 1862:23, 1863:2, 1863:9, 1863:10, 1865:5, 1865:6 bribed [1] - 1776:20 bribery [4] - 1705:2, 1713:5, 1713:6, 1713:8</p>	<p>brie [1] - 1858:12 brief [3] - 1649:25, 1815:7, 1869:11 bring [25] - 1640:24, 1652:17, 1653:9, 1653:14, 1654:6, 1654:7, 1654:8, 1655:7, 1691:7, 1693:24, 1697:17, 1698:18, 1698:19, 1698:21, 1741:4, 1762:22, 1782:18, 1788:19, 1788:21, 1826:12, 1838:9, 1839:1 bringing [2] - 1716:3, 1762:20 brings [2] - 1754:3, 1765:17 broke [1] - 1741:11 Brooklyn [3] - 1639:5, 1639:23, 1783:15 brother [36] - 1677:11, 1685:17, 1687:2, 1687:20, 1688:3, 1688:11, 1688:12, 1689:3, 1689:4, 1689:6, 1689:7, 1689:8, 1689:10, 1689:14, 1689:15, 1689:19, 1690:3, 1690:6, 1690:17, 1692:3, 1692:6, 1692:7, 1692:10, 1692:11, 1694:17, 1694:20, 1694:25, 1712:13, 1714:25, 1775:12, 1844:22, 1867:4 brought [10] - 1653:17, 1712:23, 1716:8, 1717:24, 1720:3, 1785:1, 1806:19, 1809:9, 1826:11, 1865:25 Broward [1] - 1765:10 Brownell [2] - 1642:11, 1756:5 BROWNELL [1] - 1639:15 Bryant [3] - 1765:8, 1765:10, 1767:5 Bryant's [1] - 1767:11 BS [1] - 1856:14 bucks [1] - 1827:12 buddy [1] - 1816:15 bugging [1] - 1686:2 building [2] - 1788:15, 1788:16 builds [1] - 1669:11 bulk [2] - 1711:3, 1725:21 bullet [7] - 1738:14, 1738:15, 1738:24, 1739:8, 1739:12, 1739:14, 1759:8 bullets [4] - 1645:14, 1649:12, 1649:16, 1649:19 bunch [3] - 1681:23, 1743:8, 1782:2 burden [17] - 1641:24, 1722:11, 1769:24, 1772:14, 1804:15, 1804:16, 1845:25, 1846:4, 1846:5, 1846:10, 1846:12, 1852:6, 1863:5 bus [1] - 1669:12 business [16] - 1669:13, 1683:12, 1686:9, 1729:13, 1734:14, 1734:16, 1736:8, 1768:15, 1768:16, 1790:10, 1792:7, 1793:24, 1806:21, 1812:3, 1837:2, 1863:22 businesses [1] - 1832:4 busy [1] - 1696:14 butt [1] - 1829:24 Buxton [6] - 1645:9, 1667:22, 1667:23, 1728:21, 1729:3, 1729:4 buy [8] - 1658:11, 1672:21, 1676:7, 1676:11, 1682:16, 1712:2, 1747:9, 1823:24</p>
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<p>buying ^[1] - 1854:10 BY ^[1] - 1639:14 bypass ^[3] - 1695:9, 1695:10, 1802:17 Byrd ^[1] - 1722:16</p>		
C		
<p>cab ^[1] - 1750:2 cadets ^[1] - 1843:14 Cadman ^[1] - 1639:22 callers ^[1] - 1719:2 Camacho ^[43] - 1667:2, 1679:1, 1704:7, 1704:24, 1704:25, 1705:3, 1706:20, 1707:2, 1707:16, 1708:14, 1708:17, 1710:15, 1712:19, 1712:24, 1713:3, 1713:4, 1743:15, 1746:2, 1751:20, 1753:13, 1759:4, 1770:16, 1770:18, 1842:12, 1842:13, 1843:12, 1843:24, 1843:25, 1844:1, 1857:13, 1857:20, 1858:7, 1860:22, 1860:23, 1861:1, 1861:4, 1862:18, 1862:19, 1863:14, 1863:16, 1863:19, 1864:24, 1865:13 Camacho's ^[4] - 1743:2, 1743:5, 1743:14, 1843:20 CAMPBELL ^[1] - 1639:13 canceled ^[2] - 1864:1 cannot ^[6] - 1654:23, 1665:15, 1670:10, 1699:24, 1699:25, 1756:24 capable ^[5] - 1651:25, 1652:2, 1688:2, 1806:10, 1807:21 capacity ^[1] - 1644:17 capture ^[1] - 1807:1 captures ^[1] - 1718:19 car ^[2] - 1645:14, 1649:18 card ^[3] - 1736:8, 1768:15, 1768:16 care ^[17] - 1654:10, 1654:11, 1662:20, 1665:5, 1665:6, 1685:7, 1707:10, 1707:11, 1709:4, 1709:5, 1709:17, 1709:18, 1709:19, 1709:22, 1753:8, 1835:22, 1852:22 career ^[3] - 1773:23, 1774:14, 1774:23 careful ^[7] - 1674:10, 1677:2, 1677:23, 1680:20, 1684:24, 1752:3, 1771:2 carefully ^[6] - 1721:2, 1776:6, 1780:5, 1806:12, 1824:9, 1846:14 careless ^[3] - 1780:3, 1827:15, 1827:16 carelessness ^[2] - 1827:18, 1827:20 cares ^[5] - 1677:13, 1682:24, 1701:1, 1720:24 Carl ^[2] - 1720:4 Carolina ^[1] - 1788:17 carry ^[1] - 1802:13 case ^[175] - 1641:9, 1642:12, 1643:2, 1643:9, 1643:22, 1644:10, 1661:21, 1666:19, 1666:23, 1669:1, 1681:23, 1682:2, 1682:5, 1682:6, 1682:11, 1684:9, 1684:15, 1690:25, 1711:13,</p>	<p>1721:2, 1721:15, 1722:8, 1722:17, 1723:2, 1723:4, 1723:5, 1723:9, 1723:11, 1725:14, 1725:15, 1725:25, 1726:4, 1726:23, 1727:6, 1730:16, 1732:11, 1734:5, 1734:6, 1734:10, 1737:15, 1737:21, 1739:25, 1742:2, 1747:5, 1753:24, 1756:6, 1756:24, 1757:15, 1761:22, 1763:1, 1763:16, 1763:17, 1765:5, 1765:14, 1766:13, 1766:20, 1768:5, 1770:5, 1770:8, 1770:9, 1771:4, 1771:6, 1771:14, 1772:15, 1773:20, 1774:11, 1774:16, 1774:22, 1775:11, 1775:21, 1775:23, 1776:9, 1776:10, 1776:11, 1776:12, 1776:15, 1776:16, 1777:13, 1779:9, 1779:11, 1781:1, 1781:2, 1781:4, 1782:3, 1782:9, 1783:18, 1784:20, 1785:3, 1785:22, 1785:25, 1786:6, 1789:3, 1789:9, 1789:11, 1789:22, 1790:11, 1790:24, 1791:1, 1791:2, 1791:13, 1798:13, 1803:9, 1805:3, 1805:11, 1808:5, 1809:20, 1809:21, 1809:23, 1811:23, 1814:2, 1814:5, 1815:1, 1815:13, 1817:17, 1817:23, 1818:22, 1819:12, 1820:7, 1823:17, 1824:19, 1828:1, 1831:1, 1838:4, 1838:23, 1840:1, 1840:13, 1841:4, 1844:12, 1845:21, 1846:19, 1846:21, 1847:4, 1847:10, 1848:9, 1848:15, 1850:6, 1850:8, 1850:11, 1850:12, 1850:14, 1852:17, 1852:25, 1853:25, 1854:2, 1854:6, 1854:8, 1854:17, 1854:18, 1854:20, 1855:12, 1860:7, 1862:22, 1863:12, 1864:25, 1865:20, 1865:23, 1865:25, 1866:2, 1866:9, 1866:11, 1866:12, 1866:15, 1866:16, 1866:21, 1867:8, 1869:5, 1869:10, 1869:14 cases ^[2] - 1679:5, 1788:5 cash ^[1] - 1859:12 cast ^[1] - 1789:19 CAT ^[1] - 1639:25 cattle ^[1] - 1828:12 caught ^[2] - 1664:2, 1677:2 caused ^[1] - 1854:6 cautious ^[1] - 1752:6 cc ^[1] - 1687:5 CC ^[2] - 1752:13, 1752:14 cc'd ^[1] - 1752:2 CDs ^[1] - 1803:23 Ceaser ^[3] - 1823:3, 1848:16, 1848:18 ceiling ^[2] - 1677:7, 1704:20 celebrated ^[1] - 1865:19 celebrity ^[1] - 1865:19 cell ^[8] - 1660:12, 1718:8, 1718:19, 1720:14, 1780:22, 1792:19, 1807:1, 1836:17 centerpiece ^[1] - 1682:4 central ^[1] - 1661:21 certain ^[11] - 1649:5, 1733:5, 1745:23,</p>	<p>1748:13, 1748:25, 1809:14, 1845:3, 1861:18, 1865:4, 1866:3 certainly ^[6] - 1669:15, 1669:17, 1684:10, 1709:12, 1769:19, 1772:23 cetera ^[2] - 1700:16 CF-28 ^[2] - 1716:15, 1716:19 CFM ^[1] - 1716:17 CFM-34 ^[1] - 1716:15 chair ^[4] - 1644:21, 1811:14, 1845:18 challenge ^[3] - 1865:25, 1866:1 challenged ^[1] - 1777:1 champion ^[1] - 1834:7 chance ^[6] - 1717:10, 1717:13, 1823:10, 1829:21, 1829:22, 1865:16 change ^[7] - 1693:18, 1700:4, 1706:23, 1737:19, 1830:20, 1834:9, 1834:10 changed ^[3] - 1727:13, 1733:21, 1737:22 changes ^[11] - 1674:1, 1674:4, 1709:16, 1723:22, 1725:25, 1733:22, 1741:21, 1741:23, 1757:16, 1836:25, 1844:12 character ^[4] - 1834:22, 1835:2, 1839:5, 1840:16 charade ^[1] - 1730:19 charge ^[22] - 1640:8, 1713:4, 1713:6, 1713:8, 1715:24, 1743:12, 1760:23, 1787:23, 1787:24, 1792:21, 1792:22, 1797:5, 1797:6, 1800:17, 1800:20, 1805:20, 1827:17, 1845:19, 1853:21 charged ^[15] - 1640:18, 1645:1, 1711:5, 1711:6, 1712:5, 1713:11, 1716:2, 1781:1, 1783:13, 1784:12, 1808:8, 1808:9, 1809:14, 1809:23, 1867:13 charges ^[14] - 1712:4, 1713:7, 1713:8, 1713:9, 1715:25, 1763:1, 1772:5, 1779:11, 1808:24, 1809:20, 1809:21, 1824:18, 1841:24, 1847:15 charging ^[3] - 1668:6, 1773:1, 1850:5 chart ^[3] - 1773:24, 1842:5, 1866:20 charts ^[1] - 1866:19 check ^[12] - 1655:7, 1772:11, 1773:8, 1776:7, 1802:20, 1816:13, 1816:17, 1823:10, 1823:11, 1844:2, 1858:4, 1865:5 checked ^[2] - 1796:11, 1846:24 checking ^[4] - 1796:14, 1796:15, 1796:17, 1796:25 checkoff ^[1] - 1772:24 children ^[3] - 1669:13, 1811:4, 1833:3 chill ^[1] - 1868:2 Chinaman ^[9] - 1667:1, 1677:11, 1677:14, 1677:19, 1678:9, 1678:16, 1678:25, 1682:24 Chinaman's ^[1] - 1670:18 choices ^[5] - 1644:19, 1644:20, 1644:21, 1644:22 choose ^[3] - 1773:12, 1790:19,</p>

<p>1830:17 choreographed [1] - 1818:20 chose [4] - 1644:23, 1644:24, 1864:2 chosen [1] - 1699:20 circumstances [3] - 1839:14, 1846:9, 1866:21 City [1] - 1846:25 city [1] - 1851:3 civil [2] - 1801:19, 1841:21 claim [7] - 1732:9, 1792:8, 1792:12, 1801:25, 1841:15, 1860:2, 1860:12 claimed [2] - 1780:11, 1792:8 claiming [3] - 1702:13, 1788:5, 1821:19 claims [2] - 1739:19, 1775:11 clairvoyant [1] - 1864:23 clarified [1] - 1797:16 Clarke [92] - 1658:10, 1658:11, 1658:19, 1659:13, 1662:16, 1666:25, 1667:22, 1668:8, 1670:11, 1670:14, 1671:1, 1671:2, 1673:7, 1673:21, 1674:16, 1674:24, 1676:6, 1681:24, 1682:6, 1682:15, 1704:8, 1704:9, 1704:11, 1704:13, 1705:1, 1706:7, 1707:8, 1707:15, 1708:15, 1713:17, 1713:19, 1713:21, 1713:23, 1713:25, 1714:5, 1714:9, 1714:10, 1719:19, 1745:13, 1753:13, 1759:4, 1764:3, 1764:17, 1770:17, 1770:19, 1770:20, 1770:22, 1770:23, 1783:6, 1785:23, 1792:13, 1792:14, 1792:16, 1792:17, 1792:19, 1792:24, 1793:1, 1795:15, 1796:12, 1801:18, 1802:22, 1810:1, 1822:6, 1822:21, 1825:11, 1825:12, 1825:19, 1825:24, 1826:2, 1826:14, 1826:15, 1826:17, 1828:20, 1830:10, 1840:23, 1841:6, 1841:9, 1841:20, 1842:6, 1843:12, 1843:15, 1844:3, 1845:16, 1847:9, 1848:15, 1852:9, 1853:13, 1853:15, 1855:16 Clarke's [29] - 1673:24, 1674:3, 1674:16, 1676:16, 1677:6, 1677:7, 1677:18, 1678:8, 1678:21, 1680:3, 1680:10, 1680:13, 1680:16, 1682:15, 1704:12, 1704:20, 1744:17, 1745:24, 1747:12, 1747:14, 1747:18, 1750:1, 1751:20, 1753:10, 1764:20, 1796:10, 1826:3, 1826:4, 1827:14 Clarkes [5] - 1826:7, 1826:8 clear [22] - 1643:8, 1654:21, 1659:24, 1670:11, 1670:12, 1671:21, 1672:1, 1672:10, 1672:19, 1673:3, 1673:7, 1676:11, 1678:24, 1686:4, 1689:23, 1715:14, 1726:18, 1782:7, 1795:21, 1808:25, 1819:9, 1860:1 cleared [1] - 1797:19 clearly [2] - 1669:9, 1669:21 CLERK [1] - 1741:5 client [37] - 1642:23, 1643:3, 1645:1, 1645:3, 1662:25, 1664:20, 1666:18,</p>	<p>1714:25, 1715:3, 1715:4, 1715:11, 1715:15, 1720:16, 1778:17, 1781:9, 1783:19, 1786:18, 1789:5, 1789:16, 1789:17, 1790:25, 1791:15, 1795:3, 1795:7, 1795:15, 1804:1, 1811:10, 1816:11, 1818:9, 1818:18, 1841:2, 1845:5, 1851:19, 1860:6, 1866:3, 1866:6 client's [4] - 1797:15, 1818:8, 1823:9, 1866:4 clock [3] - 1822:17, 1837:8, 1838:7 close [5] - 1686:1, 1686:5, 1702:25, 1704:11, 1819:13 closed [1] - 1861:25 closer [3] - 1781:17, 1781:19, 1799:6 closing [7] - 1641:7, 1641:13, 1775:5, 1781:3, 1782:20, 1865:14 cloth [1] - 1843:23 clothes [2] - 1832:11, 1832:22 club [4] - 1703:14, 1703:20, 1703:21, 1757:9 clubs [1] - 1832:5 co [1] - 1722:16 co-counsel [1] - 1722:16 coach [1] - 1650:18 coaching [4] - 1648:2, 1651:9, 1669:4, 1712:8 cocaine [3] - 1835:11, 1837:3, 1841:16 coconspirator [4] - 1730:17, 1815:10, 1818:11, 1835:22 coconspirators [2] - 1732:9, 1732:10 code [3] - 1749:24, 1802:17, 1839:17 coincidence [4] - 1651:6, 1796:5, 1796:8 coke [1] - 1777:24 collar [2] - 1791:1 colleague [2] - 1642:11, 1728:8 colleagues [1] - 1791:14 colossal [2] - 1796:5 Colossal [1] - 1796:7 comb [1] - 1840:9 combinations [2] - 1749:14, 1755:21 comfortable [1] - 1828:7 coming [23] - 1696:5, 1696:14, 1696:20, 1708:21, 1709:1, 1723:15, 1730:16, 1732:5, 1733:23, 1737:21, 1751:3, 1760:11, 1762:3, 1762:19, 1762:24, 1772:23, 1816:5, 1829:9, 1832:21, 1842:20, 1843:8, 1849:22 commander [1] - 1796:4 commence [1] - 1869:12 comment [1] - 1868:24 commentary [1] - 1659:25 comments [1] - 1787:8 commerce [1] - 1716:4 commercial [1] - 1716:12 commit [12] - 1702:4, 1711:13, 1738:6, 1780:4, 1780:8, 1780:25, 1781:5, 1782:22, 1816:10, 1816:19, 1819:2 commitment [2] - 1789:19, 1803:14</p>	<p>committed [9] - 1702:1, 1702:7, 1776:23, 1779:11, 1781:13, 1781:17, 1787:25, 1819:3, 1833:10 committee [1] - 1866:10 committing [3] - 1780:7, 1830:15, 1849:19 common [4] - 1655:7, 1655:9, 1844:5, 1868:11 communicate [1] - 1643:25 communication [1] - 1851:12 communications [2] - 1718:7, 1718:25 community [1] - 1731:23 companies [1] - 1729:19 Company [1] - 1757:20 company [9] - 1718:13, 1718:14, 1718:15, 1718:16, 1718:17, 1720:5, 1729:20, 1754:16, 1763:7 compare [3] - 1714:14, 1714:21, 1738:20 complains [1] - 1703:13 complete [2] - 1738:1, 1845:19 completely [4] - 1665:15, 1838:17, 1838:18, 1841:14 complex [1] - 1838:4 complicated [2] - 1706:9, 1838:4 complied [2] - 1794:19, 1808:7 comply [1] - 1808:6 complying [1] - 1803:24 computer [19] - 1659:4, 1659:9, 1659:16, 1660:1, 1660:2, 1660:9, 1673:24, 1709:14, 1717:20, 1760:20, 1761:14, 1761:15, 1762:19, 1789:7, 1804:10, 1824:4, 1824:5, 1824:8 computers [10] - 1685:16, 1691:23, 1716:1, 1716:18, 1761:3, 1762:13, 1762:16, 1796:16, 1806:6 concern [3] - 1673:4, 1682:20, 1682:21 concerned [4] - 1674:8, 1685:7, 1725:2, 1753:8 concession [1] - 1784:21 conclude [1] - 1690:20 concluded [2] - 1787:8, 1869:22 concludes [1] - 1787:12 conclusion [3] - 1734:3, 1744:22, 1748:17 conclusions [2] - 1814:20 conduct [5] - 1814:8, 1819:8, 1845:5, 1845:20, 1853:22 conference [2] - 1710:21, 1857:24 confident [1] - 1721:5 confirm [2] - 1735:22, 1788:2 confirms [1] - 1667:17 conflict [1] - 1823:5 conflicts [1] - 1845:11 conform [1] - 1827:20 conforming [1] - 1671:17 conformity [1] - 1706:3</p>
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<p>confound [1] - 1811:11</p> <p>confront [1] - 1706:24</p> <p>confuse [1] - 1811:11</p> <p>confused [3] - 1726:13, 1769:19, 1844:23</p> <p>confusion [1] - 1676:8</p> <p>Congress [2] - 1845:8, 1868:7</p> <p>conjugated [1] - 1652:5</p> <p>conjunction [1] - 1802:10</p> <p>connect [2] - 1664:12, 1744:15</p> <p>connected [3] - 1771:2, 1771:3, 1791:15</p> <p>connection [8] - 1730:14, 1784:20, 1819:14, 1827:18, 1829:9, 1834:25, 1837:3, 1868:19</p> <p>connects [1] - 1664:11</p> <p>consequences [2] - 1643:16, 1644:22</p> <p>consider [12] - 1711:17, 1715:24, 1721:2, 1721:3, 1721:4, 1726:19, 1773:19, 1811:23, 1812:5, 1838:10, 1854:14</p> <p>consideration [1] - 1868:4</p> <p>considered [1] - 1695:18</p> <p>considering [2] - 1869:7</p> <p>consist [1] - 1641:8</p> <p>consistent [4] - 1721:6, 1852:5, 1852:6</p> <p>consists [1] - 1745:11</p> <p>conspiracy [26] - 1711:12, 1711:14, 1712:4, 1713:8, 1738:6, 1749:6, 1750:16, 1771:16, 1771:21, 1771:24, 1772:1, 1772:4, 1772:9, 1774:4, 1774:7, 1779:12, 1809:22, 1809:23, 1810:4, 1813:16, 1815:11, 1816:4, 1836:5, 1836:22, 1849:22, 1850:19</p> <p>conspiratorial [1] - 1839:12</p> <p>conspire [4] - 1711:19, 1711:20, 1711:21</p> <p>conspired [1] - 1668:9</p> <p>conspiring [4] - 1711:6, 1773:25, 1774:2, 1801:18</p> <p>Constitution [1] - 1867:1</p> <p>constitutional [2] - 1790:25, 1866:4</p> <p>constitutionally [1] - 1866:24</p> <p>consult [1] - 1768:13</p> <p>Cont'd [3] - 1722:1, 1780:1, 1838:2</p> <p>Cont'd [1] - 1676:1</p> <p>contact [8] - 1686:1, 1699:16, 1764:17, 1790:10, 1790:12, 1790:13, 1791:11, 1791:12</p> <p>contained [4] - 1663:18, 1701:18, 1717:22, 1841:24</p> <p>contemporaneous [2] - 1796:6, 1796:7</p> <p>contempt [2] - 1779:12</p> <p>contents [1] - 1767:1</p> <p>content [2] - 1820:18, 1861:12</p> <p>context [3] - 1793:22, 1824:21, 1829:8</p> <p>contingency [1] - 1854:1</p> <p>continually [1] - 1817:5</p>	<p>continue [4] - 1660:5, 1700:2, 1812:4, 1869:18</p> <p>continued [5] - 1688:14, 1779:15, 1797:22, 1817:4, 1858:16</p> <p>Continued [11] - 1640:25, 1657:5, 1675:3, 1705:10, 1721:16, 1740:8, 1759:25, 1819:18, 1837:17, 1837:19, 1867:15</p> <p>continues [3] - 1670:24, 1736:25, 1778:7</p> <p>Continuing [5] - 1658:1, 1706:1, 1760:1, 1820:1, 1868:1</p> <p>continuing [5] - 1689:1, 1798:1, 1817:5, 1831:8, 1859:1</p> <p>continuously [1] - 1817:9</p> <p>contours [1] - 1817:17</p> <p>contract [4] - 1713:14, 1793:18, 1793:21, 1814:7</p> <p>contractor [1] - 1793:20</p> <p>contrary [1] - 1650:19</p> <p>control [3] - 1705:5, 1718:18, 1718:20</p> <p>convenient [1] - 1804:12</p> <p>conversation [49] - 1654:2, 1660:15, 1664:14, 1680:8, 1684:19, 1687:15, 1693:10, 1694:10, 1698:13, 1703:11, 1707:25, 1719:24, 1730:12, 1742:17, 1743:19, 1744:24, 1745:6, 1745:10, 1745:11, 1750:8, 1750:11, 1750:14, 1766:4, 1766:7, 1768:9, 1768:18, 1768:21, 1778:19, 1778:22, 1811:25, 1812:6, 1812:16, 1812:24, 1813:7, 1813:21, 1813:24, 1814:13, 1815:18, 1821:12, 1821:14, 1821:16, 1829:20, 1835:15, 1860:1, 1860:2, 1862:9</p> <p>conversations [50] - 1663:21, 1664:7, 1664:12, 1676:4, 1687:10, 1708:16, 1710:4, 1712:22, 1749:3, 1767:11, 1778:2, 1778:4, 1778:17, 1780:12, 1780:14, 1780:15, 1780:18, 1782:14, 1801:10, 1801:16, 1802:1, 1802:11, 1802:19, 1802:21, 1802:22, 1802:23, 1802:25, 1803:23, 1806:3, 1806:10, 1806:22, 1807:1, 1807:6, 1807:10, 1807:22, 1808:4, 1808:19, 1812:10, 1814:6, 1814:7, 1817:4, 1821:12, 1821:18, 1834:23, 1835:2, 1835:3, 1847:14, 1851:15</p> <p>convert [1] - 1805:2</p> <p>convict [1] - 1650:14</p> <p>convicted [1] - 1866:4</p> <p>convince [1] - 1818:21</p> <p>cool [2] - 1828:13, 1830:25</p> <p>cooperated [1] - 1677:12</p> <p>cooperating [9] - 1683:4, 1683:7, 1683:17, 1683:25, 1688:13, 1724:15, 1777:10, 1782:11, 1841:11</p> <p>cooperator [13] - 1664:10, 1680:21, 1682:21, 1682:22, 1724:18, 1780:16, 1781:15, 1782:3, 1782:15, 1784:11, 1784:14, 1786:2, 1830:14</p>	<p>cooperators [2] - 1785:22, 1825:19</p> <p>coordinate [2] - 1699:3, 1699:14</p> <p>cop [1] - 1757:23</p> <p>copied [2] - 1714:4, 1714:5</p> <p>copies [5] - 1796:2, 1796:6, 1850:10, 1850:11</p> <p>copy [5] - 1709:21, 1709:24, 1710:2, 1796:2, 1796:3</p> <p>corner [1] - 1826:22</p> <p>correct [14] - 1640:22, 1658:21, 1661:1, 1661:6, 1663:2, 1663:6, 1665:10, 1665:13, 1715:19, 1717:22, 1738:21, 1738:24, 1748:25, 1756:8</p> <p>corrected [4] - 1662:25, 1715:13, 1715:16</p> <p>correction [1] - 1800:18</p> <p>correctional [1] - 1713:13</p> <p>corrections [4] - 1793:1, 1797:5, 1797:14, 1797:21</p> <p>corroborate [2] - 1683:15, 1841:8</p> <p>corroborated [3] - 1729:19, 1841:9, 1846:23</p> <p>corroboration [1] - 1841:14</p> <p>corrupt [2] - 1704:4, 1815:13</p> <p>corrupted [1] - 1844:7</p> <p>corrupter [1] - 1815:12</p> <p>corrupting [1] - 1644:15</p> <p>corruption [1] - 1831:22</p> <p>corruptly [7] - 1640:16, 1640:19, 1711:15, 1749:7, 1771:5, 1772:18, 1783:11</p> <p>cost [5] - 1706:13, 1761:19, 1761:25, 1762:4, 1762:6</p> <p>costs [2] - 1756:7, 1756:10</p> <p>couched [2] - 1746:16</p> <p>couching [1] - 1749:21</p> <p>counsel [2] - 1722:16, 1775:1</p> <p>count [6] - 1772:7, 1772:9, 1772:24, 1773:1, 1773:7, 1773:8</p> <p>Count [4] - 1640:13, 1792:22, 1808:22, 1808:23</p> <p>country [5] - 1813:4, 1831:8, 1853:12, 1853:15, 1866:23</p> <p>counts [4] - 1721:7, 1772:5, 1772:12, 1772:21</p> <p>County [1] - 1765:11</p> <p>couple [6] - 1727:10, 1743:1, 1759:22, 1769:9, 1770:11, 1866:14</p> <p>coupled [1] - 1780:24</p> <p>course [15] - 1641:11, 1702:12, 1727:18, 1736:23, 1736:24, 1770:25, 1779:6, 1781:3, 1814:3, 1815:18, 1816:2, 1868:16, 1868:17, 1868:19</p> <p>COURT [53] - 1639:1, 1640:2, 1640:10, 1640:14, 1640:20, 1640:23, 1641:2, 1642:6, 1647:7, 1647:12, 1656:19, 1688:5, 1688:9, 1690:21, 1690:24, 1691:3, 1691:7, 1691:15, 1692:14, 1702:20, 1721:9, 1728:5, 1728:8, 1728:11, 1739:21, 1739:24, 1740:3,</p>
---	---	---

<p>1740:6, 1741:3, 1741:7, 1774:25, 1798:8, 1798:11, 1798:13, 1798:16, 1799:1, 1799:7, 1799:9, 1799:12, 1799:17, 1799:19, 1799:22, 1800:2, 1800:6, 1800:8, 1800:11, 1800:13, 1800:15, 1837:13, 1838:2, 1855:6, 1868:23, 1869:21</p> <p>Court [4] - 1639:22, 1740:7, 1849:10, 1860:25</p> <p>court [27] - 1692:23, 1709:1, 1713:16, 1761:23, 1775:1, 1778:11, 1794:15, 1803:2, 1803:17, 1822:1, 1822:8, 1823:14, 1823:17, 1837:18, 1838:1, 1847:7, 1848:11, 1851:7, 1851:8, 1851:9, 1851:10, 1852:8, 1852:11, 1852:14, 1868:15</p> <p>courthouse [2] - 1803:9, 1844:13</p> <p>Courthouse [1] - 1639:4</p> <p>courtroom [18] - 1644:16, 1644:20, 1655:8, 1775:2, 1777:19, 1778:9, 1778:10, 1779:7, 1789:23, 1804:1, 1804:24, 1809:15, 1845:13, 1846:2, 1847:8, 1849:4, 1869:20</p> <p>cousin [7] - 1646:2, 1650:10, 1667:18, 1668:3, 1727:23, 1729:23, 1730:2</p> <p>covered [2] - 1811:18</p> <p>covering [2] - 1794:14, 1841:19</p> <p>cozy [1] - 1832:2</p> <p>crafted [1] - 1769:18</p> <p>crafty [1] - 1668:13</p> <p>crap [2] - 1670:21, 1868:13</p> <p>crashed [3] - 1659:9, 1659:16, 1660:2</p> <p>crazy [6] - 1674:3, 1677:7, 1677:21, 1680:23, 1758:2, 1844:18</p> <p>created [4] - 1664:11, 1715:20, 1789:9, 1842:25</p> <p>credibility [7] - 1654:25, 1724:6, 1822:6, 1822:7, 1822:11, 1822:22, 1852:10</p> <p>credible [1] - 1714:16</p> <p>credit [2] - 1817:1, 1854:22</p> <p>crew [1] - 1677:12</p> <p>crime [43] - 1660:19, 1660:20, 1660:23, 1661:1, 1661:2, 1661:3, 1661:6, 1661:10, 1661:14, 1661:15, 1661:23, 1673:14, 1673:15, 1677:3, 1702:22, 1731:23, 1731:24, 1732:3, 1738:6, 1749:17, 1749:18, 1749:19, 1771:16, 1776:23, 1779:10, 1780:4, 1780:8, 1780:9, 1781:5, 1781:10, 1781:13, 1781:16, 1782:23, 1787:24, 1787:25, 1809:14, 1831:19, 1864:20, 1869:6</p> <p>crimes [4] - 1645:1, 1658:24, 1702:8, 1830:15</p> <p>criminal [34] - 1643:3, 1644:24, 1736:6, 1777:1, 1778:20, 1781:21, 1784:15, 1788:22, 1788:23, 1809:18, 1815:11, 1815:12, 1819:7, 1819:11, 1819:12, 1827:16, 1827:18, 1827:20,</p>	<p>1835:8, 1836:5, 1849:22, 1849:24, 1850:18, 1850:21, 1850:23, 1851:5, 1851:21, 1853:22, 1853:25, 1854:2, 1857:7, 1866:2, 1866:10, 1867:14</p> <p>criminality [1] - 1824:25</p> <p>criminally [1] - 1805:21</p> <p>criminals [8] - 1643:4, 1672:17, 1676:13, 1678:19, 1678:23, 1745:21, 1747:7, 1850:15</p> <p>critical [1] - 1684:14</p> <p>critically [1] - 1756:21</p> <p>crop [1] - 1734:10</p> <p>cross [35] - 1648:3, 1657:4, 1663:13, 1663:15, 1669:1, 1671:6, 1671:10, 1673:13, 1683:20, 1727:15, 1731:5, 1738:13, 1738:17, 1739:2, 1746:16, 1748:21, 1765:3, 1767:2, 1777:18, 1797:13, 1820:23, 1821:10, 1826:11, 1828:22, 1831:6, 1831:8, 1833:13, 1834:2, 1834:11, 1835:10, 1842:11, 1847:12, 1847:13, 1849:6, 1851:25</p> <p>cross-examination [23] - 1648:3, 1663:13, 1663:15, 1671:6, 1671:10, 1673:13, 1683:20, 1727:15, 1738:13, 1746:16, 1748:21, 1765:3, 1767:2, 1797:13, 1820:23, 1821:10, 1826:11, 1828:22, 1831:6, 1833:13, 1834:11, 1835:10, 1849:6</p> <p>cross-examine [1] - 1657:4</p> <p>cross-to-kill [1] - 1831:8</p> <p>crucially [1] - 1862:13</p> <p>crumbs [1] - 1851:22</p> <p>cryptic [1] - 1749:25</p> <p>crystal [1] - 1673:3</p> <p>cultural [3] - 1801:8, 1840:24, 1841:20</p> <p>cup [1] - 1832:2</p> <p>cured [1] - 1840:11</p> <p>curiosity [1] - 1816:7</p> <p>curious [1] - 1857:14</p> <p>currency [1] - 1859:15</p> <p>curtail [1] - 1799:22</p> <p>customer [1] - 1716:13</p> <p>cut [6] - 1697:2, 1697:13, 1697:16, 1698:5, 1777:6, 1818:5</p> <p>cuts [1] - 1818:6</p> <p>cutting [2] - 1697:8, 1697:24</p> <p>cynical [3] - 1789:20, 1789:21, 1790:9</p>	<p>1691:17, 1692:16, 1702:21, 1706:1</p> <p>D'Alessandro [25] - 1641:21, 1642:4, 1691:16, 1721:9, 1726:1, 1727:15, 1731:6, 1735:7, 1744:11, 1744:15, 1744:22, 1746:14, 1750:7, 1763:23, 1768:3, 1769:25, 1775:17, 1778:23, 1779:4, 1797:12, 1797:19, 1811:15, 1814:4, 1823:21, 1859:3</p> <p>D'Alessandro's [2] - 1722:8, 1782:20</p> <p>D'Alessandro [1] - 1780:19</p> <p>dad [1] - 1686:5</p> <p>Dadanawa [1] - 1690:10</p> <p>Dade [1] - 1793:8</p> <p>dancer [2] - 1827:4, 1844:20</p> <p>dancing [2] - 1685:21, 1686:19</p> <p>dangerous [1] - 1847:17</p> <p>dangle [1] - 1704:5</p> <p>DANIEL [1] - 1639:15</p> <p>Daniel [1] - 1642:11</p> <p>dare [1] - 1643:11</p> <p>Darmuid [2] - 1708:9, 1820:6</p> <p>dastardly [1] - 1825:5</p> <p>Dataram [9] - 1645:21, 1646:19, 1647:19, 1684:1, 1684:2, 1685:3, 1692:12, 1693:5, 1711:22</p> <p>date [7] - 1647:19, 1663:3, 1710:6, 1770:19, 1849:7, 1849:8, 1869:22</p> <p>dated [2] - 1775:12, 1820:8</p> <p>dates [1] - 1809:20</p> <p>daughter [1] - 1867:4</p> <p>Dave [6] - 1687:10, 1690:16, 1694:3, 1697:6, 1699:23, 1703:2</p> <p>David [72] - 1658:10, 1662:16, 1664:9, 1666:25, 1668:8, 1670:14, 1680:9, 1681:24, 1683:6, 1683:10, 1683:16, 1683:25, 1686:24, 1699:18, 1699:19, 1704:8, 1704:9, 1704:11, 1704:13, 1704:20, 1705:1, 1706:7, 1707:15, 1713:17, 1713:19, 1713:21, 1713:23, 1713:25, 1714:5, 1714:9, 1714:10, 1719:18, 1744:17, 1745:24, 1747:12, 1747:14, 1750:1, 1753:9, 1753:13, 1759:4, 1764:3, 1764:17, 1764:20, 1770:17, 1770:18, 1770:20, 1770:22, 1770:23, 1785:23, 1787:7, 1792:13, 1792:14, 1792:24, 1793:1, 1795:14, 1796:10, 1796:12, 1801:18, 1809:25, 1825:11, 1825:12, 1825:18, 1825:19, 1826:2, 1842:6, 1845:16</p> <p>David's [2] - 1764:16, 1787:10</p> <p>days [11] - 1717:10, 1758:25, 1759:5, 1776:11, 1788:7, 1793:12, 1836:9, 1840:9, 1855:14, 1860:19</p> <p>DC [2] - 1687:9, 1866:7</p> <p>DEA [7] - 1697:3, 1697:8, 1697:12, 1697:16, 1697:25, 1698:5, 1865:12</p> <p>dead [1] - 1646:8</p> <p>deal [32] - 1650:11, 1667:20, 1667:23, 1668:4, 1673:8, 1674:17, 1687:21, 1687:25, 1692:17, 1692:19, 1693:5,</p>
D		
<p>D'Alessandro [1] - 1729:21</p> <p>d'ALESSANDRO [1] - 1688:7</p> <p>D'ALESSANDRO [29] - 1639:14, 1640:7, 1640:11, 1640:13, 1640:15, 1640:22, 1642:5, 1642:7, 1647:8, 1647:15, 1656:21, 1658:1, 1659:21, 1660:7, 1673:1, 1673:3, 1673:23, 1674:15, 1676:1, 1678:4, 1687:19, 1688:10, 1689:1, 1690:23, 1691:11,</p>		

<p>1693:6, 1694:3, 1694:5, 1697:3, 1697:8, 1697:13, 1697:16, 1697:24, 1698:5, 1703:4, 1704:12, 1707:13, 1708:7, 1708:14, 1708:25, 1709:1, 1720:8, 1723:4, 1730:13, 1798:3, 1862:14</p> <p>dealer [10] - 1650:10, 1667:16, 1668:2, 1669:16, 1669:18, 1712:10, 1729:24, 1730:11, 1813:12, 1813:15</p> <p>dealing [11] - 1655:23, 1669:10, 1694:22, 1715:6, 1728:1, 1728:20, 1729:13, 1730:6, 1730:24, 1731:22, 1787:12</p> <p>dealings [2] - 1762:18, 1787:10</p> <p>deals [3] - 1660:1, 1686:8, 1777:24</p> <p>dealt [2] - 1720:4, 1765:14</p> <p>dear [1] - 1735:19</p> <p>death [3] - 1651:6, 1651:22, 1677:7</p> <p>Deb [5] - 1768:3, 1768:6, 1768:22, 1831:24, 1832:1</p> <p>Deborah [1] - 1788:16</p> <p>deceitful [1] - 1830:14</p> <p>deceive [1] - 1660:3</p> <p>December [1] - 1719:12</p> <p>decent [2] - 1832:19</p> <p>decide [9] - 1680:1, 1680:4, 1713:9, 1723:1, 1747:19, 1749:22, 1753:24, 1774:21, 1868:14</p> <p>decided [4] - 1643:1, 1643:2, 1658:6, 1666:12</p> <p>decides [1] - 1778:8</p> <p>deciding [1] - 1771:14</p> <p>decipherable [1] - 1749:25</p> <p>decision [1] - 1666:17</p> <p>decisions [4] - 1643:20, 1666:11, 1685:6, 1771:12</p> <p>declare [1] - 1717:21</p> <p>dedicated [1] - 1789:17</p> <p>deed [1] - 1851:24</p> <p>defend [2] - 1841:3, 1847:2</p> <p>defendant [9] - 1644:17, 1644:21, 1645:3, 1714:10, 1714:12, 1719:5, 1721:7, 1777:21, 1869:7</p> <p>Defendant's [1] - 1786:19</p> <p>defendant's [5] - 1641:24, 1666:24, 1691:19, 1711:5, 1714:20</p> <p>Defendants [2] - 1639:6, 1639:17</p> <p>defendants [16] - 1641:23, 1642:12, 1642:15, 1642:20, 1643:1, 1643:9, 1646:14, 1658:13, 1702:17, 1710:22, 1713:1, 1713:9, 1716:2, 1718:3, 1718:10, 1720:20</p> <p>defendants' [1] - 1716:7</p> <p>defending [1] - 1645:1</p> <p>Defense [1] - 1784:2</p> <p>defense [49] - 1642:1, 1643:4, 1644:25, 1668:8, 1671:18, 1714:22, 1767:10, 1767:11, 1777:8, 1777:9, 1778:12, 1789:4, 1797:8, 1797:9, 1797:10, 1798:4, 1802:23, 1803:14,</p>	<p>1803:16, 1804:7, 1809:18, 1810:17, 1817:21, 1818:22, 1819:16, 1819:17, 1830:8, 1835:14, 1845:3, 1845:4, 1845:5, 1845:8, 1845:19, 1845:24, 1846:1, 1846:2, 1846:16, 1848:15, 1849:8, 1854:14, 1866:2, 1866:23, 1866:24, 1866:25, 1868:3, 1868:19</p> <p>defense's [1] - 1664:21</p> <p>defer [1] - 1827:19</p> <p>defined [1] - 1841:3</p> <p>defining [1] - 1795:11</p> <p>definitely [2] - 1681:13, 1686:7</p> <p>degree [1] - 1846:15</p> <p>degrees [1] - 1846:13</p> <p>Delfield [2] - 1731:17, 1732:8</p> <p>deliberate [2] - 1742:10, 1775:6</p> <p>deliberately [1] - 1839:4</p> <p>deliberations [1] - 1869:13</p> <p>deliver [1] - 1724:21</p> <p>delivering [1] - 1724:22</p> <p>Delvan [1] - 1787:9</p> <p>demand [1] - 1830:19</p> <p>demanding [1] - 1863:3</p> <p>demands [3] - 1808:6, 1808:8, 1809:13</p> <p>demeanor [4] - 1714:15, 1714:16, 1834:9, 1834:11</p> <p>Denney [1] - 1788:17</p> <p>deny [1] - 1814:10</p> <p>Department [3] - 1793:19, 1794:25, 1795:5</p> <p>deposed [1] - 1822:2</p> <p>deposit [1] - 1859:18</p> <p>deposited [1] - 1859:13</p> <p>deposition [3] - 1822:10, 1849:6, 1852:9</p> <p>depth [1] - 1815:7</p> <p>describe [9] - 1669:15, 1669:17, 1682:1, 1682:4, 1710:6, 1797:5, 1804:8, 1805:18, 1806:2</p> <p>described [9] - 1649:17, 1669:11, 1669:14, 1715:6, 1716:14, 1761:11, 1802:18, 1830:23, 1855:8</p> <p>describes [4] - 1683:8, 1703:1, 1832:17, 1832:18</p> <p>describing [3] - 1719:9, 1760:3, 1850:12</p> <p>description [5] - 1696:18, 1714:19, 1716:14, 1791:14, 1865:13</p> <p>descriptions [1] - 1850:1</p> <p>deserves [1] - 1816:22</p> <p>design [4] - 1718:6, 1718:24, 1807:5, 1807:9</p> <p>designed [2] - 1718:15, 1720:14</p> <p>designs [1] - 1718:17</p> <p>desire [2] - 1712:7, 1854:7</p> <p>desk [3] - 1857:24, 1858:4, 1858:14</p> <p>despise [1] - 1791:6</p> <p>despite [6] - 1789:17, 1789:18, 1811:4, 1832:17, 1833:9</p>	<p>destroy [1] - 1831:5</p> <p>destroyed [1] - 1776:21</p> <p>detail [1] - 1822:5</p> <p>detailed [2] - 1738:1, 1752:22</p> <p>details [3] - 1779:9, 1816:9, 1817:17</p> <p>detainees [1] - 1786:8</p> <p>detective [2] - 1788:19, 1793:11</p> <p>determine [5] - 1651:17, 1655:10, 1731:15, 1869:5</p> <p>deterred [1] - 1720:21</p> <p>devastating [4] - 1664:20, 1664:25, 1683:13, 1699:23</p> <p>develop [3] - 1789:15, 1824:20, 1831:12</p> <p>device [7] - 1667:5, 1668:13, 1672:4, 1704:18, 1806:3, 1807:4, 1807:9</p> <p>devices [2] - 1705:3, 1802:11</p> <p>difference [3] - 1655:12, 1657:3, 1733:15</p> <p>differences [1] - 1658:2</p> <p>different [32] - 1655:3, 1658:21, 1661:4, 1663:25, 1706:24, 1711:9, 1723:15, 1729:1, 1729:20, 1731:4, 1732:12, 1736:9, 1738:15, 1753:8, 1757:12, 1765:16, 1767:2, 1767:21, 1786:7, 1806:23, 1834:12, 1838:18, 1839:18, 1840:14, 1841:14, 1842:17, 1844:14, 1853:4, 1855:24, 1866:1, 1868:10</p> <p>difficult [4] - 1752:5, 1778:19, 1778:22, 1801:19</p> <p>difficulty [1] - 1778:6</p> <p>digests [1] - 1718:21</p> <p>dilemma [1] - 1669:21</p> <p>diligence [2] - 1789:18, 1867:7</p> <p>direct [11] - 1657:3, 1664:15, 1667:22, 1727:22, 1728:14, 1766:18, 1767:3, 1768:7, 1834:3, 1834:8</p> <p>directed [2] - 1692:1, 1702:4</p> <p>directing [2] - 1808:14, 1853:1</p> <p>direction [1] - 1780:18</p> <p>directly [7] - 1641:8, 1659:24, 1704:8, 1715:18, 1727:22, 1728:3, 1731:20</p> <p>directory [2] - 1647:9, 1690:11</p> <p>dirty [1] - 1851:24</p> <p>disagree [2] - 1695:20</p> <p>disagreement [1] - 1801:23</p> <p>disappeared [1] - 1831:1</p> <p>disappearing [1] - 1824:13</p> <p>disappears [1] - 1825:9</p> <p>discharging [1] - 1837:8</p> <p>disciplinary [1] - 1866:9</p> <p>discovery [1] - 1782:10</p> <p>discretion [3] - 1679:23, 1744:14, 1777:6</p> <p>discuss [8] - 1680:18, 1690:25, 1739:25, 1752:24, 1795:10, 1798:13, 1869:10, 1869:14</p> <p>discussed [8] - 1681:2, 1683:18, 1743:8, 1752:23, 1753:14, 1753:18,</p>
---	---	--

<p>1766:8, 1825:23 discussing [2] - 1706:15, 1853:8 discussion [8] - 1660:10, 1680:15, 1687:3, 1704:17, 1735:15, 1743:4, 1782:12, 1782:13 discussions [4] - 1672:23, 1707:15, 1707:25, 1708:2 disguise [4] - 1706:11, 1747:5, 1747:22, 1749:20 disguised [2] - 1746:17, 1746:20 disguises [3] - 1748:13, 1749:19, 1755:23 dishes [1] - 1803:5 dismantle [1] - 1725:3 dismantles [1] - 1833:3 dismantling [1] - 1725:2 dispute [10] - 1646:13, 1713:12, 1713:13, 1713:17, 1713:18, 1713:20, 1713:24, 1715:4, 1716:6, 1716:8 dissuade [1] - 1659:6 dissuading [2] - 1677:8, 1677:9 distance [1] - 1789:15 distinction [1] - 1666:3 distract [1] - 1682:9 distracted [4] - 1660:8, 1660:9, 1671:14, 1673:25 DISTRICT [3] - 1639:1, 1639:1, 1639:10 divide [4] - 1801:8, 1840:25, 1841:20 Dockers [1] - 1654:11 document [22] - 1662:9, 1662:22, 1662:23, 1662:25, 1663:3, 1663:5, 1663:12, 1663:18, 1664:1, 1670:16, 1701:19, 1709:16, 1716:20, 1720:12, 1736:17, 1820:24, 1822:16, 1822:18, 1823:2, 1834:6, 1848:13, 1868:17 documentation [1] - 1851:11 documents [12] - 1717:14, 1719:6, 1721:4, 1770:8, 1801:12, 1820:16, 1820:17, 1851:14, 1852:25, 1853:12, 1857:24 dodge [1] - 1762:19 dogs [1] - 1645:13 dollars [15] - 1704:17, 1712:11, 1744:14, 1745:22, 1745:23, 1747:6, 1747:7, 1747:8, 1750:3, 1753:2, 1761:18, 1762:2, 1762:6, 1819:9, 1819:12 Donald [10] - 1645:8, 1645:15, 1646:12, 1649:6, 1649:14, 1649:18, 1651:6, 1677:11, 1837:4 done [36] - 1644:2, 1677:4, 1678:9, 1678:23, 1689:17, 1689:18, 1690:18, 1691:12, 1693:5, 1695:3, 1696:6, 1696:8, 1719:3, 1725:17, 1756:15, 1757:4, 1765:13, 1767:3, 1769:8, 1785:17, 1789:1, 1799:4, 1799:11, 1800:1, 1800:3, 1809:2, 1810:10, 1810:25, 1817:25, 1829:5, 1829:6, 1832:18, 1837:10, 1854:25, 1855:5,</p>	<p>1855:25 door [4] - 1653:12, 1653:13, 1655:7, 1831:25 doors [1] - 1691:8 dope [1] - 1830:15 double [1] - 1813:25 doubt [23] - 1641:25, 1644:14, 1658:7, 1698:10, 1722:6, 1746:9, 1748:19, 1756:24, 1766:23, 1769:24, 1770:6, 1771:19, 1772:10, 1772:22, 1773:7, 1774:18, 1780:24, 1829:7, 1846:7, 1863:6, 1864:16, 1869:6 down [50] - 1645:13, 1659:5, 1660:9, 1671:24, 1672:1, 1673:25, 1681:12, 1687:8, 1694:2, 1694:19, 1695:12, 1699:4, 1700:8, 1706:22, 1707:22, 1707:23, 1708:6, 1709:22, 1710:16, 1712:23, 1714:4, 1734:8, 1747:11, 1751:5, 1752:21, 1768:2, 1772:20, 1773:15, 1774:20, 1785:23, 1792:16, 1793:8, 1795:6, 1796:13, 1809:4, 1812:7, 1813:8, 1813:22, 1813:24, 1816:14, 1822:9, 1822:15, 1823:11, 1825:19, 1830:23, 1832:23, 1838:7, 1838:9, 1856:19, 1860:5 downplay [1] - 1683:20 draft [7] - 1706:20, 1707:17, 1826:13, 1843:20, 1850:16, 1868:7 drafted [1] - 1712:19 drafts [1] - 1706:25 drain [1] - 1659:15 dramatic [1] - 1834:10 draw [2] - 1641:18, 1752:5 drawer [2] - 1859:4, 1859:7 dressed [1] - 1648:18 drive [8] - 1649:11, 1649:15, 1659:13, 1682:16, 1717:20, 1761:19, 1832:24 drive-by [3] - 1649:11, 1649:15, 1832:24 driving [3] - 1643:19, 1643:22, 1658:20 drop [3] - 1775:20, 1775:22, 1850:24 dropped [9] - 1824:25, 1826:4, 1826:5, 1826:9, 1826:16, 1826:20, 1827:3, 1827:6, 1830:1 drug [33] - 1645:20, 1645:22, 1650:9, 1650:11, 1664:11, 1667:15, 1667:20, 1668:2, 1668:4, 1669:10, 1669:16, 1669:18, 1683:10, 1683:12, 1685:12, 1702:24, 1712:10, 1729:23, 1730:11, 1730:13, 1734:5, 1787:10, 1790:4, 1813:12, 1813:14, 1837:2, 1841:7, 1841:13, 1849:2, 1849:19 Drug [1] - 1697:16 drugs [15] - 1645:5, 1645:25, 1669:8, 1684:2, 1684:20, 1692:19, 1702:11, 1707:5, 1730:6, 1730:15, 1785:9, 1801:20, 1801:21, 1849:2 dry [1] - 1777:6 dumb [1] - 1764:8</p>	<p>dumbest [1] - 1851:20 duplicated [2] - 1785:20 duplicating [1] - 1853:7 during [21] - 1641:11, 1643:6, 1644:13, 1649:3, 1661:24, 1663:9, 1663:13, 1667:18, 1689:2, 1731:5, 1773:16, 1781:2, 1781:24, 1786:21, 1812:24, 1814:2, 1821:16, 1838:10, 1842:10, 1842:22, 1852:19 duty [11] - 1742:3, 1742:17, 1744:1, 1745:13, 1745:14, 1777:10, 1781:9, 1790:25, 1796:1, 1816:13, 1816:17 DX [1] - 1786:19 dying [2] - 1649:7, 1649:18</p> <p style="text-align: center;">E</p> <p>e-mail [17] - 1664:14, 1681:8, 1687:4, 1712:14, 1717:11, 1763:22, 1764:1, 1764:2, 1764:4, 1764:11, 1764:12, 1767:23, 1767:25, 1790:19, 1843:4, 1855:22 e-mailed [2] - 1681:10, 1843:5 e-mails [5] - 1828:3, 1828:7, 1850:3, 1850:10, 1850:12 ear [3] - 1774:18, 1800:8, 1800:12 early [2] - 1801:3, 1812:6 ears [1] - 1862:7 earth [5] - 1792:24, 1810:10, 1824:13, 1851:21, 1864:21 easier [4] - 1723:1, 1772:13, 1812:1, 1832:9 easily [4] - 1742:5, 1846:11, 1850:19, 1850:20 East [1] - 1639:22 EASTERN [1] - 1639:1 easy [3] - 1704:4, 1830:1 eavesdropping [2] - 1800:21, 1801:7 echo [3] - 1778:23, 1779:3, 1834:24 education [1] - 1831:8 Edward [2] - 1714:22, 1797:9 eerily [1] - 1649:17 effect [1] - 1803:9 effective [1] - 1866:24 effectively [1] - 1692:24 effort [3] - 1732:3, 1808:6, 1818:22 efforts [12] - 1666:21, 1666:24, 1686:21, 1691:19, 1691:20, 1700:2, 1704:19, 1711:5, 1752:3, 1814:22, 1815:5, 1867:9 eight [12] - 1656:7, 1656:21, 1666:23, 1684:9, 1691:22, 1759:22, 1760:15, 1815:17, 1848:12, 1848:16, 1860:15 either [5] - 1676:7, 1708:7, 1711:25, 1823:24, 1842:8 electricity [2] - 1659:2, 1659:15 electronics [1] - 1724:25 element [6] - 1771:17, 1771:18, 1772:3, 1772:10, 1773:18, 1846:6</p>
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<p>elements [4] - 1771:16, 1771:17, 1795:8, 1806:2</p> <p>elevated [1] - 1797:20</p> <p>Eleven [1] - 1792:22</p> <p>eliminate [2] - 1830:12, 1831:5</p> <p>eliminating [1] - 1831:21</p> <p>elmo [1] - 1842:5</p> <p>Elmo [3] - 1647:6, 1747:16, 1752:18</p> <p>elsewhere [1] - 1869:8</p> <p>email [21] - 1647:16, 1647:21, 1750:8, 1751:6, 1751:9, 1751:11, 1751:12, 1751:14, 1751:15, 1751:21, 1751:22, 1752:2, 1752:8, 1752:9, 1752:10, 1752:14, 1752:16, 1757:19, 1809:3</p> <p>emails [1] - 1751:17</p> <p>embrace [1] - 1833:9</p> <p>embraced [1] - 1857:8</p> <p>embroidered [1] - 1845:9</p> <p>emergency [1] - 1863:24</p> <p>emphasize [3] - 1776:3, 1810:22, 1840:15</p> <p>emphasized [1] - 1776:4</p> <p>employee [5] - 1754:16, 1757:21, 1757:24, 1794:7, 1794:8</p> <p>employees [1] - 1670:13</p> <p>employer [1] - 1787:6</p> <p>encourage [1] - 1845:15</p> <p>encouraging [1] - 1819:7</p> <p>end [17] - 1664:24, 1719:12, 1737:9, 1756:25, 1761:10, 1765:23, 1775:5, 1777:22, 1778:1, 1825:17, 1831:1, 1853:9, 1854:10, 1856:5, 1864:13, 1868:5, 1868:25</p> <p>ends [1] - 1735:16</p> <p>enemies [1] - 1668:9</p> <p>energy [2] - 1814:22, 1815:5</p> <p>enforce [2] - 1851:9, 1851:10</p> <p>enforced [1] - 1866:5</p> <p>enforcement [2] - 1672:16, 1731:3</p> <p>Enforcement [1] - 1697:16</p> <p>engage [2] - 1819:7, 1853:22</p> <p>engaged [5] - 1660:10, 1661:17, 1702:3, 1788:23, 1831:13</p> <p>engineering [1] - 1780:11</p> <p>England [2] - 1720:7</p> <p>English [1] - 1718:12</p> <p>ensues [1] - 1857:23</p> <p>entered [1] - 1771:20</p> <p>Enterprise [1] - 1686:7</p> <p>entertainment [1] - 1816:24</p> <p>enthusiasm [2] - 1854:6, 1868:2</p> <p>entire [5] - 1734:4, 1757:15, 1762:14, 1820:13, 1838:10</p> <p>entitled [4] - 1846:15, 1848:13, 1866:23, 1866:24</p> <p>entrepreneur [5] - 1667:15, 1668:18, 1668:23, 1669:5, 1734:13</p> <p>entries [1] - 1790:18</p> <p>entry [1] - 1792:13</p>	<p>envelope [3] - 1850:17, 1850:22, 1851:25</p> <p>episode [2] - 1838:11</p> <p>epithets [1] - 1812:17</p> <p>equally [2] - 1722:23, 1774:3</p> <p>equipment [65] - 1716:22, 1716:25, 1717:3, 1717:4, 1717:25, 1719:4, 1719:11, 1719:14, 1719:17, 1719:25, 1720:6, 1720:8, 1720:9, 1720:10, 1720:13, 1757:18, 1757:19, 1758:9, 1758:11, 1758:15, 1758:17, 1758:18, 1758:22, 1759:10, 1759:11, 1760:21, 1761:21, 1762:1, 1762:3, 1762:4, 1762:12, 1762:15, 1762:21, 1763:13, 1772:21, 1772:23, 1773:3, 1782:4, 1782:7, 1800:21, 1801:7, 1801:11, 1802:4, 1802:10, 1804:3, 1804:9, 1804:14, 1804:22, 1805:13, 1805:22, 1806:7, 1806:9, 1806:24, 1807:15, 1808:6, 1808:9, 1808:12, 1808:19, 1808:21, 1809:3, 1851:8, 1851:18</p> <p>ESQ [4] - 1639:17, 1639:17, 1639:19, 1639:20</p> <p>Esquire [1] - 1786:25</p> <p>essential [1] - 1806:11</p> <p>essentially [4] - 1756:14, 1759:21, 1773:22, 1785:12</p> <p>establish [3] - 1789:6, 1822:20, 1822:21</p> <p>established [1] - 1788:25</p> <p>establishes [1] - 1788:22</p> <p>estate [2] - 1706:9, 1706:13</p> <p>estimate [1] - 1799:4</p> <p>et [2] - 1700:16</p> <p>ethical [1] - 1867:1</p> <p>Europe [4] - 1645:24, 1684:2, 1684:22, 1835:11</p> <p>evaluate [4] - 1654:24, 1726:23, 1753:23, 1771:10</p> <p>evaluating [1] - 1811:23</p> <p>EVAN [1] - 1639:17</p> <p>Evan [1] - 1862:11</p> <p>evaporate [1] - 1830:16</p> <p>evasive [2] - 1656:11, 1658:6</p> <p>evening [1] - 1869:19</p> <p>event [1] - 1770:12</p> <p>events [3] - 1793:25, 1806:24, 1857:19</p> <p>everyday [3] - 1655:6, 1655:9, 1722:2</p> <p>everywhere [1] - 1846:24</p> <p>evidence [105] - 1641:9, 1641:11, 1641:14, 1641:17, 1644:4, 1648:25, 1652:7, 1656:18, 1660:3, 1663:11, 1664:7, 1671:19, 1679:4, 1679:17, 1679:20, 1683:13, 1684:14, 1684:15, 1685:15, 1689:4, 1690:13, 1691:22, 1699:15, 1701:21, 1710:13, 1711:3, 1713:23, 1716:9, 1716:23, 1720:2, 1721:2, 1721:4, 1721:6, 1722:7, 1722:12, 1724:4, 1742:15, 1743:18, 1745:3, 1745:15, 1749:10, 1749:16,</p>	<p>1749:17, 1749:18, 1749:19, 1750:5, 1756:1, 1756:2, 1758:25, 1760:16, 1761:17, 1761:20, 1761:22, 1762:17, 1762:23, 1767:24, 1769:23, 1771:11, 1772:13, 1774:16, 1775:9, 1775:17, 1775:20, 1775:21, 1775:22, 1776:7, 1776:17, 1776:21, 1777:14, 1780:14, 1781:20, 1787:18, 1789:6, 1789:14, 1789:20, 1789:21, 1803:6, 1803:7, 1804:18, 1805:5, 1805:8, 1805:10, 1826:11, 1826:12, 1826:13, 1830:9, 1830:24, 1831:12, 1841:19, 1842:23, 1842:25, 1844:21, 1846:13, 1847:4, 1854:25, 1859:10, 1859:11, 1866:15, 1866:16, 1868:5</p> <p>evil [1] - 1816:5</p> <p>Ex [4] - 1690:8, 1717:12, 1717:15, 1762:5</p> <p>ex [1] - 1646:7</p> <p>ex-police [1] - 1646:7</p> <p>exact [1] - 1809:20</p> <p>exactly [27] - 1652:18, 1653:7, 1654:8, 1660:7, 1681:17, 1687:19, 1689:18, 1689:23, 1690:5, 1693:4, 1698:20, 1743:16, 1752:16, 1758:21, 1759:16, 1760:9, 1765:1, 1767:22, 1808:24, 1815:4, 1816:18, 1818:3, 1818:17, 1832:5, 1852:9, 1852:11</p> <p>examination [32] - 1648:3, 1663:13, 1663:15, 1671:6, 1671:10, 1673:13, 1683:20, 1727:15, 1731:5, 1738:13, 1738:18, 1739:2, 1746:16, 1748:21, 1765:3, 1766:18, 1767:2, 1767:4, 1768:8, 1797:13, 1820:23, 1821:10, 1826:11, 1828:22, 1828:23, 1831:6, 1833:13, 1834:8, 1834:11, 1835:10, 1842:11, 1849:6</p> <p>examine [3] - 1657:4, 1814:5, 1834:2</p> <p>examined [4] - 1669:1, 1828:7, 1847:13</p> <p>example [14] - 1660:17, 1661:24, 1664:6, 1710:10, 1742:1, 1742:2, 1745:8, 1745:17, 1750:11, 1764:19, 1765:23, 1770:14, 1783:8</p> <p>examples [2] - 1710:6, 1712:25</p> <p>excellent [2] - 1856:23</p> <p>exciting [2] - 1855:13</p> <p>exclusive [2] - 1814:14, 1827:16</p> <p>exclusively [1] - 1779:1</p> <p>excuse [7] - 1645:23, 1648:20, 1664:7, 1686:14, 1728:5, 1739:21, 1829:24</p> <p>excuses [1] - 1685:24</p> <p>execution [1] - 1652:1</p> <p>executioners [2] - 1648:22, 1654:9</p> <p>Exed [1] - 1802:14</p> <p>exercise [1] - 1770:11</p> <p>Exhibit [18] - 1691:25, 1713:22, 1714:3, 1714:20, 1716:9, 1716:23, 1717:17, 1751:16, 1752:1, 1754:23, 1758:10, 1764:14, 1770:14, 1775:9,</p>
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<p>1784:2, 1786:19, 1804:7, 1863:18 exhibit [7] - 1663:14, 1791:8, 1804:18, 1826:23, 1840:22 exhibits [3] - 1641:11, 1786:20, 1840:23 exist [4] - 1745:3, 1749:8, 1767:14, 1802:2 existed [2] - 1749:8, 1785:13 existence [1] - 1745:2 exists [5] - 1749:9, 1749:18, 1750:5, 1847:2, 1860:24 exited [1] - 1740:2 expect [7] - 1648:14, 1684:23, 1701:12, 1780:1, 1780:6, 1799:13, 1845:14 expecting [1] - 1786:24 expects [1] - 1778:11 expenses [3] - 1819:14, 1848:20, 1854:9 experience [7] - 1655:9, 1657:2, 1788:18, 1788:24, 1830:18, 1853:24, 1862:24 experienced [1] - 1868:11 experiment [10] - 1782:21, 1782:25, 1783:2, 1783:10, 1784:17, 1785:18, 1788:2, 1788:3, 1788:4, 1862:25 expert [9] - 1661:10, 1664:21, 1736:5, 1777:1, 1777:2, 1777:3, 1804:11 experts [1] - 1760:20 explain [14] - 1674:16, 1682:8, 1711:11, 1712:6, 1761:5, 1771:6, 1771:17, 1772:6, 1778:3, 1778:15, 1778:20, 1778:23, 1778:25, 1846:14 explained [8] - 1676:21, 1680:20, 1682:5, 1718:19, 1719:1, 1768:11, 1859:4, 1859:5 explaining [7] - 1756:20, 1764:3, 1771:8, 1778:6, 1804:24, 1812:24, 1827:5 explains [7] - 1651:16, 1683:9, 1689:18, 1822:4, 1822:6, 1822:7, 1834:1 explanation [2] - 1714:13, 1734:4 explicit [1] - 1672:10 explore [2] - 1665:20, 1815:7 exportations [1] - 1645:23 exporting [3] - 1785:9, 1801:21, 1835:10 exposed [1] - 1644:15 Express [2] - 1716:10, 1761:7 exquisite [2] - 1864:18, 1864:19 exquisitely [1] - 1781:21 extension [2] - 1794:2, 1794:5 extensively [1] - 1646:16 extent [3] - 1648:4, 1648:6, 1670:17 eye [1] - 1686:11 eyes [3] - 1656:6, 1836:21, 1861:25</p>	<p style="text-align: center;">F</p> <p>face [12] - 1653:5, 1653:18, 1653:22, 1654:5, 1698:17, 1715:18, 1766:15, 1769:14, 1775:7, 1851:21, 1852:13, 1868:5 faced [2] - 1714:11, 1866:2 faces [3] - 1656:6, 1681:24, 1682:19 facility [10] - 1713:12, 1713:13, 1713:18, 1713:21, 1714:24, 1715:2, 1764:4, 1796:9, 1798:3, 1834:20 fact [48] - 1641:13, 1641:23, 1723:22, 1724:4, 1725:8, 1729:2, 1730:11, 1734:19, 1734:25, 1736:2, 1737:1, 1737:17, 1742:7, 1745:2, 1749:9, 1750:4, 1754:7, 1755:4, 1756:14, 1757:5, 1757:21, 1760:19, 1761:22, 1770:21, 1771:25, 1772:7, 1778:14, 1778:15, 1789:22, 1790:17, 1791:10, 1795:19, 1801:9, 1801:15, 1807:6, 1814:12, 1824:1, 1824:8, 1824:9, 1830:8, 1833:10, 1834:20, 1840:3, 1843:23, 1844:22, 1867:6, 1867:8, 1867:9 facts [11] - 1641:17, 1641:18, 1655:10, 1670:21, 1701:18, 1789:15, 1800:23, 1800:25, 1821:4, 1842:19 factual [1] - 1843:21 faded [1] - 1831:1 fade [1] - 1826:1 failed [2] - 1722:9, 1722:13 fails [1] - 1746:7 failure [1] - 1766:22 fair [7] - 1794:7, 1799:18, 1808:1, 1808:3, 1833:17, 1844:6, 1868:4 fairly [1] - 1795:23 fall [1] - 1682:6 falls [1] - 1825:9 false [12] - 1661:1, 1663:21, 1664:1, 1669:19, 1702:16, 1702:17, 1711:2, 1844:8, 1846:9, 1847:11, 1868:17, 1868:18 falsehood [2] - 1749:13, 1755:20 falsely [1] - 1689:5 familiar [3] - 1663:13, 1717:1, 1758:11 families [2] - 1643:15, 1672:20 family [24] - 1658:20, 1658:21, 1658:25, 1668:3, 1670:19, 1673:10, 1673:17, 1674:23, 1678:7, 1680:24, 1682:15, 1682:24, 1704:10, 1704:21, 1712:16, 1724:15, 1729:10, 1729:12, 1733:1, 1733:2, 1733:3, 1826:14, 1826:15, 1827:14 fancy [3] - 1711:12, 1718:8, 1832:11 far [3] - 1677:23, 1759:9, 1810:24 Farrah [9] - 1667:3, 1702:23, 1703:12, 1703:13, 1757:3, 1757:8, 1827:4, 1827:7, 1844:18 fashion [1] - 1702:4</p>	<p>fast [1] - 1866:15 faster [1] - 1837:8 fat [1] - 1790:23 fatal [2] - 1651:18, 1731:15 father [1] - 1733:8 father's [3] - 1697:14, 1697:19, 1701:8 Fatman [2] - 1737:5, 1737:7 fault [1] - 1692:14 favor [2] - 1839:8, 1846:15 favorable [2] - 1785:14, 1789:16 FBI [3] - 1731:3, 1788:16, 1830:25 fear [12] - 1643:13, 1658:12, 1658:20, 1659:13, 1672:21, 1676:7, 1676:11, 1678:20, 1682:16, 1682:17, 1712:2, 1847:24 Fed [5] - 1690:8, 1717:12, 1717:15, 1762:5, 1802:14 Federal [3] - 1716:9, 1761:7, 1857:22 federal [9] - 1713:15, 1720:21, 1720:23, 1783:15, 1786:1, 1794:21, 1794:22, 1818:21, 1855:21 federally [1] - 1793:23 feds [1] - 1684:1 fee [3] - 1661:5, 1850:5, 1853:24 feed [1] - 1692:13 fees [1] - 1854:1 feet [2] - 1759:21, 1836:5 fell [2] - 1643:25, 1868:9 fellow [1] - 1694:4 felt [1] - 1869:3 female [3] - 1742:24, 1750:19, 1824:10 females [1] - 1843:14 few [4] - 1645:2, 1654:18, 1688:1, 1697:21 fide [2] - 1823:18, 1845:5 fides [2] - 1781:9, 1788:25 fifth [1] - 1820:10 fighting [3] - 1731:23, 1731:25, 1732:3 figures [1] - 1854:8 file [2] - 1671:21, 1743:15 filings [1] - 1761:23 fill [2] - 1700:17, 1856:8 filled [1] - 1716:13 final [1] - 1722:10 finally [6] - 1673:13, 1735:6, 1751:2, 1754:9, 1773:1, 1774:10 financially [2] - 1674:19, 1706:6 FIND [2] - 1737:20, 1818:25 Findman [1] - 1737:20 fine [13] - 1671:5, 1677:8, 1696:9, 1696:22, 1699:1, 1728:10, 1734:22, 1768:14, 1798:9, 1799:20, 1833:17, 1840:8 Fineman [82] - 1662:10, 1662:11, 1663:12, 1670:13, 1671:24, 1679:24, 1680:2, 1687:5, 1723:22, 1725:6, 1727:8, 1727:13, 1727:22, 1728:15, 1734:20, 1734:21, 1734:23, 1737:19, 1738:5, 1739:9, 1739:12, 1739:14,</p>
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<p>1739:18, 1741:18, 1743:22, 1747:7, 1747:18, 1750:1, 1750:2, 1752:20, 1754:9, 1755:11, 1757:1, 1757:7, 1757:14, 1757:16, 1757:22, 1764:2, 1764:3, 1764:25, 1765:13, 1765:21, 1766:8, 1766:15, 1767:25, 1770:4, 1772:16, 1775:13, 1788:6, 1792:9, 1820:9, 1820:11, 1820:12, 1821:1, 1821:3, 1822:13, 1822:15, 1825:23, 1836:1, 1836:11, 1849:23, 1850:2, 1850:12, 1850:16, 1851:4, 1851:23, 1852:14, 1852:16, 1852:21, 1852:22, 1852:24, 1853:8, 1853:22, 1856:7, 1856:12, 1857:1, 1857:12, 1861:7</p> <p>Fineman's [5] - 1727:11, 1764:21, 1850:3, 1850:8, 1850:9</p> <p>finger [1] - 1699:22</p> <p>fingerprints [2] - 1852:1, 1852:2</p> <p>finish [6] - 1769:10, 1799:7, 1799:19, 1799:24, 1837:13, 1837:16</p> <p>finished [3] - 1688:7, 1741:11, 1834:3</p> <p>fire [2] - 1651:18, 1731:15</p> <p>firing [2] - 1651:17, 1731:14</p> <p>firmly [1] - 1847:5</p> <p>first [44] - 1641:20, 1642:2, 1667:3, 1670:11, 1673:3, 1689:16, 1697:7, 1710:22, 1711:1, 1721:11, 1723:3, 1723:20, 1727:2, 1727:14, 1730:3, 1733:20, 1746:25, 1750:13, 1751:16, 1752:1, 1752:19, 1758:23, 1762:14, 1769:9, 1770:19, 1771:7, 1784:3, 1792:9, 1792:24, 1800:23, 1806:1, 1810:2, 1810:3, 1813:13, 1816:6, 1818:2, 1829:3, 1830:24, 1835:23, 1839:21, 1840:24, 1843:4, 1858:7, 1861:13</p> <p>fit [2] - 1774:17, 1865:12</p> <p>five [16] - 1685:21, 1690:13, 1690:15, 1690:23, 1712:21, 1733:18, 1733:21, 1783:17, 1783:21, 1784:9, 1784:10, 1800:7, 1820:19, 1834:3, 1853:24, 1861:15</p> <p>flash [3] - 1717:20, 1761:19</p> <p>flat [1] - 1668:16</p> <p>flatly [1] - 1852:7</p> <p>flesh [2] - 1814:22, 1851:24</p> <p>flight [1] - 1850:9</p> <p>flip [2] - 1660:2, 1660:9</p> <p>flipped [4] - 1659:3, 1659:9, 1659:17</p> <p>float [1] - 1824:3</p> <p>floor [1] - 1697:14</p> <p>Florida [2] - 1793:9, 1851:11</p> <p>flowers [1] - 1750:2</p> <p>focus [3] - 1656:20, 1725:20, 1792:8</p> <p>focused [3] - 1658:21, 1658:25, 1699:10</p> <p>focusing [1] - 1691:20</p> <p>FODEMAN [4] - 1639:14, 1798:25, 1799:14, 1799:18</p> <p>Fodeman [5] - 1739:2, 1763:24,</p>	<p>1769:25, 1797:12, 1797:17</p> <p>folks [3] - 1722:14, 1741:12, 1742:4</p> <p>follow [2] - 1851:23, 1856:1</p> <p>follow-up [1] - 1856:1</p> <p>followed [2] - 1643:21, 1825:15</p> <p>following [12] - 1640:1, 1691:2, 1691:6, 1741:2, 1776:12, 1787:3, 1798:15, 1798:21, 1822:2, 1829:8, 1835:18, 1838:1</p> <p>footnote [1] - 1848:23</p> <p>forbid [3] - 1778:2, 1778:4</p> <p>force [2] - 1643:19, 1643:22</p> <p>forced [1] - 1710:24</p> <p>foreign [1] - 1716:4</p> <p>foreperson [1] - 1773:12</p> <p>forget [9] - 1656:25, 1658:8, 1714:22, 1770:13, 1777:8, 1778:17, 1805:21, 1853:14, 1864:8</p> <p>forgot [4] - 1767:25, 1768:1, 1769:19, 1851:9</p> <p>forgotten [1] - 1770:2</p> <p>form [9] - 1749:8, 1772:16, 1782:14, 1794:24, 1795:1, 1796:13, 1796:21</p> <p>formal [1] - 1822:10</p> <p>formed [2] - 1695:24, 1730:9</p> <p>former [4] - 1646:7, 1788:18, 1790:20, 1793:11</p> <p>forms [2] - 1725:23, 1741:18</p> <p>forth [3] - 1646:22, 1729:14, 1805:10</p> <p>forward [1] - 1660:15</p> <p>foundation [1] - 1805:10</p> <p>founding [1] - 1718:13</p> <p>four [12] - 1646:11, 1651:5, 1652:19, 1665:6, 1667:25, 1697:9, 1789:16, 1797:15, 1797:16, 1803:23, 1834:6, 1842:24</p> <p>Frank [4] - 1786:4, 1786:5, 1786:13, 1788:14</p> <p>frankly [2] - 1692:23, 1707:10</p> <p>fraternizes [1] - 1843:14</p> <p>Fredboy [4] - 1646:3, 1646:10, 1646:18, 1647:20</p> <p>free [2] - 1784:5, 1784:7</p> <p>freely [1] - 1710:23</p> <p>Friday [1] - 1716:24</p> <p>friend [4] - 1686:6, 1733:10, 1733:16, 1836:8</p> <p>friend's [1] - 1724:24</p> <p>friendly [1] - 1702:7</p> <p>friends [8] - 1643:15, 1672:20, 1674:22, 1682:16, 1704:10, 1704:22, 1712:16, 1729:11</p> <p>fro [1] - 1679:22</p> <p>front [10] - 1704:5, 1735:3, 1742:8, 1794:18, 1811:14, 1832:1, 1832:16, 1833:11, 1840:3, 1860:12</p> <p>fronts [1] - 1700:20</p> <p>Frost [7] - 1796:19, 1796:21, 1797:1, 1826:21, 1826:22, 1851:2</p> <p>fucking [2] - 1687:21, 1687:25</p>	<p>Fudgey [4] - 1646:18, 1647:20, 1790:16, 1790:22</p> <p>Fudgey's [1] - 1646:18</p> <p>fulfilled [1] - 1786:17</p> <p>full [5] - 1712:21, 1775:13, 1780:17, 1808:4, 1812:3</p> <p>fundamental [1] - 1642:17</p> <p>fundamentalist [2] - 1843:13, 1844:4</p> <p>fuse [2] - 1760:9</p>
G		
<p>gain [3] - 1774:11, 1774:12, 1792:13</p> <p>game [7] - 1645:20, 1730:18, 1756:12, 1828:4, 1828:10, 1828:18</p> <p>games [2] - 1661:20</p> <p>gang [9] - 1643:25, 1645:9, 1645:17, 1687:2, 1790:5, 1813:17, 1832:11, 1849:2, 1849:3</p> <p>gangsters [1] - 1791:9</p> <p>gaping [4] - 1838:23, 1838:24, 1862:22, 1865:2</p> <p>garage [1] - 1697:14</p> <p>gather [5] - 1747:9, 1752:3, 1831:11, 1843:17, 1853:16</p> <p>gathering [1] - 1752:7</p> <p>gatherings [1] - 1701:25</p> <p>gauge [1] - 1654:25</p> <p>Gene [1] - 1639:22</p> <p>gentlemen [44] - 1644:18, 1656:4, 1668:15, 1679:2, 1690:25, 1691:18, 1706:21, 1710:10, 1715:25, 1719:20, 1721:13, 1721:14, 1722:7, 1722:22, 1736:2, 1736:23, 1737:25, 1739:6, 1739:20, 1741:10, 1741:25, 1748:18, 1749:9, 1750:4, 1753:19, 1762:8, 1762:25, 1763:12, 1764:25, 1765:15, 1765:17, 1766:22, 1769:8, 1770:2, 1770:25, 1772:8, 1773:6, 1775:2, 1791:5, 1794:6, 1797:4, 1824:16, 1828:16, 1868:4</p> <p>GEO [3] - 1713:12, 1714:2, 1834:20</p> <p>George [10] - 1666:25, 1677:11, 1680:21, 1682:18, 1682:25, 1704:22, 1746:1, 1754:6, 1826:9, 1844:15</p> <p>Georgetown [5] - 1671:13, 1692:22, 1716:11, 1866:6, 1866:7</p> <p>GERALD [1] - 1639:17</p> <p>Gerald [11] - 1646:3, 1647:15, 1651:3, 1654:3, 1672:12, 1698:14, 1698:16, 1730:23, 1731:7, 1731:11, 1731:17</p> <p>giant [4] - 1759:21, 1760:19, 1834:18, 1834:19</p> <p>gig [1] - 1674:11</p> <p>girl [1] - 1703:12</p> <p>girlfriend [4] - 1702:25, 1704:12, 1751:20, 1844:5</p> <p>given [9] - 1641:10, 1720:9, 1734:3, 1773:15, 1782:15, 1807:11, 1826:3,</p>		

<p>1826:24, 1849:7 Gleeson [11] - 1779:5, 1779:6, 1780:5, 1783:24, 1795:9, 1806:14, 1807:12, 1819:10, 1820:15, 1820:17, 1846:18 GLEESON [1] - 1639:9 Gleeson's [1] - 1779:1 gloss [1] - 1771:2 GO [6] - 1791:21, 1792:3, 1792:7, 1793:17, 1796:9, 1800:17 goal [2] - 1644:7, 1712:7 goals [1] - 1713:2 God [3] - 1778:2, 1778:4 gold [1] - 1672:21 gong [1] - 1653:23 gonna [1] - 1668:19 Gonzales [6] - 1786:5, 1786:13, 1786:22, 1788:14, 1793:14 gossip [1] - 1816:8 government [121] - 1641:21, 1641:23, 1641:25, 1642:2, 1674:9, 1677:6, 1677:20, 1677:24, 1680:22, 1683:8, 1683:11, 1711:18, 1711:19, 1718:5, 1722:3, 1722:9, 1722:12, 1724:8, 1725:5, 1725:6, 1725:11, 1739:19, 1742:5, 1755:15, 1756:5, 1756:9, 1758:25, 1760:2, 1762:14, 1765:20, 1766:10, 1766:17, 1767:1, 1767:10, 1767:13, 1767:24, 1769:11, 1769:14, 1771:3, 1771:19, 1773:17, 1773:23, 1773:24, 1775:7, 1775:11, 1778:25, 1779:10, 1781:11, 1781:15, 1781:22, 1782:8, 1782:10, 1782:11, 1783:3, 1784:11, 1784:14, 1784:21, 1784:24, 1786:3, 1789:23, 1790:1, 1790:11, 1791:8, 1801:5, 1803:11, 1803:22, 1804:2, 1804:10, 1804:13, 1804:21, 1808:14, 1808:16, 1808:17, 1810:12, 1810:13, 1810:23, 1811:20, 1811:21, 1817:21, 1819:13, 1820:25, 1822:9, 1828:1, 1829:4, 1829:11, 1830:10, 1830:14, 1830:17, 1831:10, 1832:14, 1833:9, 1833:15, 1833:19, 1837:14, 1839:3, 1841:21, 1842:5, 1842:13, 1843:8, 1846:5, 1847:16, 1849:4, 1850:13, 1850:21, 1851:16, 1852:15, 1853:20, 1854:15, 1855:8, 1859:19, 1859:25, 1860:10, 1861:6, 1862:7, 1862:13, 1864:7, 1866:21, 1869:6 Government [17] - 1639:13, 1691:25, 1713:22, 1714:3, 1716:9, 1716:23, 1717:17, 1733:14, 1751:16, 1752:1, 1754:22, 1758:10, 1761:9, 1764:14, 1770:14, 1775:9, 1863:17 government's [17] - 1642:12, 1682:2, 1682:5, 1682:11, 1736:9, 1745:8, 1745:9, 1745:11, 1758:9, 1788:5, 1809:12, 1811:23, 1820:4, 1846:5, 1852:12 grab [3] - 1690:1, 1690:6, 1692:2 graces [1] - 1685:10</p>	<p>granted [2] - 1644:1, 1753:6 graphic [1] - 1710:10 great [8] - 1640:23, 1678:5, 1678:6, 1678:12, 1678:16, 1782:18, 1808:21, 1828:10 greater [1] - 1815:7 green [1] - 1849:24 Greenhart [2] - 1691:24, 1691:25 group [23] - 1662:18, 1667:21, 1668:5, 1668:6, 1669:25, 1670:1, 1670:2, 1672:11, 1696:23, 1699:23, 1728:21, 1729:3, 1729:4, 1730:8, 1730:9, 1735:2, 1772:19, 1785:11, 1788:21, 1866:25 grow [1] - 1815:20 grumbling [1] - 1799:12 GT [3] - 1692:22, 1739:10, 1739:15 guaranteed [1] - 1686:16 guess [5] - 1669:9, 1725:18, 1822:22, 1836:24, 1854:24 guide [1] - 1742:7 guilt [5] - 1641:24, 1756:1, 1829:7, 1852:5, 1852:7 guilty [41] - 1718:3, 1721:7, 1723:17, 1744:9, 1745:4, 1749:10, 1749:11, 1750:6, 1750:12, 1755:22, 1755:24, 1756:3, 1756:15, 1756:17, 1756:23, 1762:11, 1762:22, 1763:2, 1763:20, 1763:21, 1766:22, 1772:2, 1772:11, 1772:20, 1772:25, 1773:8, 1773:13, 1774:19, 1774:22, 1790:3, 1816:16, 1831:19, 1839:22, 1840:21, 1841:24, 1847:15, 1852:7 gunmen [1] - 1646:11 gunned [2] - 1645:13, 1832:23 guns [2] - 1646:25, 1829:18 guy [58] - 1645:22, 1646:23, 1646:24, 1647:3, 1650:10, 1652:23, 1653:2, 1654:6, 1658:23, 1664:8, 1665:5, 1678:16, 1680:11, 1683:3, 1683:7, 1684:19, 1684:20, 1687:9, 1689:25, 1693:17, 1693:18, 1693:21, 1694:13, 1697:15, 1697:20, 1698:2, 1698:4, 1698:18, 1699:8, 1699:11, 1699:12, 1699:13, 1699:22, 1701:9, 1701:12, 1707:22, 1707:23, 1708:3, 1719:16, 1720:18, 1724:6, 1724:25, 1725:1, 1725:7, 1725:16, 1734:6, 1736:4, 1757:20, 1760:23, 1763:7, 1768:4, 1768:22, 1769:3, 1781:23, 1831:25, 1832:23, 1835:21 Guyana [77] - 1644:3, 1645:20, 1652:10, 1653:11, 1664:11, 1669:2, 1670:3, 1671:13, 1671:16, 1672:7, 1683:8, 1684:6, 1685:13, 1687:2, 1687:22, 1689:14, 1689:24, 1694:17, 1695:10, 1695:15, 1696:17, 1696:23, 1697:13, 1697:17, 1698:14, 1699:16, 1707:24, 1712:2, 1712:13, 1716:8, 1716:11, 1716:21, 1723:8, 1730:25,</p>	<p>1734:19, 1734:22, 1735:8, 1739:10, 1751:3, 1752:15, 1758:2, 1761:2, 1775:22, 1783:5, 1785:8, 1787:11, 1789:16, 1791:15, 1791:16, 1801:6, 1801:19, 1802:4, 1809:4, 1811:5, 1812:7, 1817:15, 1817:16, 1822:3, 1823:4, 1823:11, 1840:25, 1841:20, 1842:24, 1843:1, 1843:5, 1843:9, 1843:15, 1843:16, 1846:24, 1849:2, 1853:11, 1854:9, 1865:18, 1866:6, 1867:11 Guyanese [6] - 1831:25, 1832:4, 1832:6, 1832:8, 1832:10, 1851:16 guys [24] - 1643:23, 1645:11, 1646:5, 1646:6, 1646:7, 1646:9, 1648:15, 1648:21, 1652:4, 1652:10, 1653:13, 1676:20, 1687:22, 1689:14, 1689:24, 1695:22, 1696:5, 1700:9, 1700:10, 1700:12, 1701:11, 1725:1, 1732:2 gym [5] - 1649:9, 1649:10, 1649:14, 1649:18, 1832:21</p> <p style="text-align: center;">H</p> <p>habit [2] - 1840:6, 1840:12 half [5] - 1777:16, 1799:14, 1800:10, 1837:14, 1856:16 hammering [1] - 1789:7 hand [7] - 1662:2, 1663:2, 1736:12, 1746:21, 1826:22, 1829:6, 1869:17 handed [3] - 1662:25, 1663:1, 1768:14 handing [2] - 1662:2, 1712:15 handle [1] - 1671:10 handles [1] - 1665:1 hands [3] - 1704:16, 1706:17, 1748:14 handwriting [3] - 1714:3, 1733:14, 1761:2 happier [1] - 1831:10 happy [2] - 1685:22, 1769:12 harassing [1] - 1673:4 hard [11] - 1651:17, 1661:7, 1722:21, 1722:22, 1722:23, 1731:14, 1776:4, 1776:5, 1789:6, 1789:18 harm [2] - 1680:17, 1850:24 hates [4] - 1668:9, 1843:13, 1843:24, 1844:4 head [4] - 1643:18, 1643:23, 1799:2, 1805:1 headed [1] - 1792:7 Headley [15] - 1786:1, 1786:2, 1786:3, 1786:6, 1786:12, 1786:13, 1786:15, 1786:24, 1787:7, 1787:8, 1787:14, 1787:16, 1787:24, 1823:12, 1841:22 Headley's [1] - 1787:15 heads [1] - 1756:12 hear [39] - 1641:8, 1641:20, 1641:22, 1642:2, 1650:1, 1653:8, 1659:8, 1659:10, 1659:21, 1660:14, 1662:2, 1666:3, 1685:22, 1695:5, 1706:25,</p>
--	---	--

<p>1707:12, 1722:19, 1755:2, 1755:7, 1755:10, 1755:19, 1756:1, 1769:17, 1783:24, 1792:22, 1806:13, 1807:19, 1818:7, 1818:9, 1825:15, 1825:16, 1825:18, 1861:15, 1861:20, 1862:6, 1862:8, 1869:11</p> <p>heard [73] - 1640:3, 1641:9, 1660:7, 1660:15, 1662:12, 1663:6, 1663:14, 1668:22, 1673:25, 1674:7, 1682:14, 1682:18, 1682:23, 1694:12, 1694:19, 1707:8, 1722:7, 1722:8, 1726:2, 1727:1, 1727:3, 1736:3, 1747:11, 1750:8, 1753:25, 1770:22, 1777:22, 1781:24, 1783:4, 1784:17, 1786:8, 1787:4, 1787:5, 1787:12, 1788:20, 1789:14, 1790:8, 1790:9, 1791:7, 1796:11, 1799:15, 1801:7, 1801:8, 1801:11, 1801:17, 1811:13, 1812:8, 1814:14, 1817:9, 1817:10, 1817:15, 1817:25, 1818:18, 1820:6, 1820:19, 1822:23, 1825:17, 1826:15, 1827:23, 1828:1, 1828:16, 1829:15, 1831:6, 1831:17, 1836:1, 1849:7, 1849:25, 1850:6, 1854:1, 1862:7, 1864:25</p> <p>hearing [3] - 1734:25, 1855:17, 1861:21</p> <p>hears [2] - 1723:21, 1741:22</p> <p>heart [3] - 1777:13, 1855:12</p> <p>heart's [1] - 1861:11</p> <p>heat [3] - 1677:15, 1683:1</p> <p>heavy [2] - 1787:13, 1802:13</p> <p>heels [1] - 1755:2</p> <p>held [4] - 1678:22, 1731:19, 1755:18, 1839:6</p> <p>hell [1] - 1680:14</p> <p>hello [2] - 1836:10, 1836:11</p> <p>help [30] - 1644:6, 1644:24, 1652:21, 1652:22, 1653:5, 1653:18, 1653:21, 1653:23, 1654:16, 1686:10, 1692:10, 1700:8, 1701:1, 1707:9, 1735:20, 1736:21, 1737:13, 1739:12, 1739:16, 1765:24, 1765:25, 1782:17, 1803:1, 1822:20, 1822:21, 1831:20, 1835:14, 1842:2, 1848:15</p> <p>helped [2] - 1644:11, 1728:1</p> <p>helpful [2] - 1786:16, 1802:23</p> <p>helping [6] - 1671:2, 1681:19, 1695:18, 1729:2, 1731:23, 1765:7</p> <p>helps [1] - 1710:12</p> <p>henchman [1] - 1816:5</p> <p>herself [1] - 1746:11</p> <p>hesitate [5] - 1715:18, 1715:19, 1715:21, 1715:22, 1720:22</p> <p>hi [1] - 1758:10</p> <p>hidden [2] - 1810:6, 1839:17</p> <p>hide [8] - 1655:16, 1656:12, 1664:4, 1666:11, 1706:9, 1708:3, 1730:19</p> <p>hiding [7] - 1697:13, 1697:19, 1697:20, 1701:9, 1830:15</p> <p>high [3] - 1662:16, 1662:18, 1665:4</p>	<p>highlight [1] - 1858:6</p> <p>highlighted [1] - 1731:6</p> <p>himself [17] - 1658:20, 1672:13, 1724:14, 1728:2, 1788:1, 1788:10, 1811:3, 1825:6, 1830:18, 1832:17, 1832:19, 1834:13, 1835:4, 1839:7, 1839:8, 1843:5, 1868:21</p> <p>hint [3] - 1824:23, 1824:24, 1824:25</p> <p>hit [2] - 1697:21, 1840:12</p> <p>hmm [1] - 1860:16</p> <p>hold [6] - 1654:23, 1693:14, 1744:6, 1769:5, 1790:21, 1829:17</p> <p>holds [1] - 1786:8</p> <p>hole [4] - 1838:23, 1838:24, 1862:22, 1865:3</p> <p>home [10] - 1647:15, 1647:17, 1647:21, 1686:2, 1687:9, 1725:3, 1833:5, 1833:8, 1834:15, 1869:19</p> <p>homeless [1] - 1669:13</p> <p>homes [1] - 1669:12</p> <p>homicide [2] - 1788:18, 1793:11</p> <p>honest [1] - 1655:15</p> <p>honestly [1] - 1708:22</p> <p>Honor [9] - 1640:7, 1642:5, 1647:6, 1656:15, 1690:19, 1691:17, 1692:13, 1741:5, 1741:9</p> <p>honor [1] - 1694:5</p> <p>HONORABLE [1] - 1639:9</p> <p>hook [2] - 1816:3, 1816:6</p> <p>hope [3] - 1641:3, 1716:16, 1850:24</p> <p>hoped [1] - 1665:13</p> <p>hopefully [2] - 1708:1, 1708:5</p> <p>hoping [1] - 1709:8</p> <p>horn [1] - 1697:21</p> <p>horrible [2] - 1650:12, 1668:12</p> <p>horrific [1] - 1651:25</p> <p>hot [1] - 1826:3</p> <p>hotel [3] - 1653:3, 1653:4, 1716:11</p> <p>hour [9] - 1659:18, 1800:10, 1812:1, 1815:17, 1835:21, 1837:14, 1857:21</p> <p>hour's [1] - 1799:14</p> <p>hours [10] - 1789:11, 1799:6, 1799:17, 1814:3, 1815:17, 1833:4, 1833:22, 1850:6, 1850:7, 1866:14</p> <p>house [8] - 1697:11, 1697:14, 1697:19, 1710:7, 1710:8, 1713:15, 1724:24</p> <p>housed [3] - 1679:4, 1764:3, 1765:1</p> <p>houses [1] - 1759:10</p> <p>huge [1] - 1739:4</p> <p>hundred [1] - 1691:22</p> <p>hundreds [1] - 1762:1</p> <p>hurt [2] - 1764:21, 1833:3</p> <p>hurting [1] - 1658:24</p> <p>husband [1] - 1867:4</p>	<p>idea [22] - 1710:1, 1748:1, 1748:4, 1750:21, 1801:16, 1812:12, 1814:12, 1820:20, 1823:22, 1823:24, 1828:10, 1846:21, 1856:7, 1856:17, 1856:20, 1856:21, 1856:22, 1856:23, 1857:8</p> <p>identification [1] - 1795:20</p> <p>identified [3] - 1662:9, 1663:5, 1786:23</p> <p>identify [4] - 1808:5, 1850:20, 1863:17, 1863:19</p> <p>idle [1] - 1816:7</p> <p>ignore [1] - 1655:4</p> <p>ignored [3] - 1642:17, 1822:13, 1822:14</p> <p>illegal [15] - 1702:1, 1702:5, 1702:14, 1711:13, 1720:24, 1746:8, 1746:10, 1746:13, 1746:25, 1748:1, 1748:7, 1748:8, 1748:11, 1815:14, 1819:16</p> <p>illogical [3] - 1738:10, 1744:22, 1748:18</p> <p>illustrates [2] - 1835:18, 1835:19</p> <p>IM [1] - 1809:4</p> <p>imagination [3] - 1647:25, 1648:5, 1648:9</p> <p>imagine [5] - 1653:11, 1653:19, 1791:12, 1809:22, 1832:24</p> <p>immaterial [1] - 1665:15</p> <p>immediately [1] - 1860:14</p> <p>immunity [2] - 1811:13, 1811:16</p> <p>impeach [5] - 1822:6, 1822:7, 1822:10, 1831:12, 1853:14</p> <p>implement [2] - 1667:5, 1672:5</p> <p>implementing [1] - 1856:17</p> <p>implicate [1] - 1697:5</p> <p>implied [1] - 1715:12</p> <p>import [1] - 1720:23</p> <p>important [34] - 1641:15, 1664:16, 1665:16, 1665:17, 1682:8, 1682:10, 1682:11, 1683:21, 1702:15, 1708:18, 1723:17, 1725:5, 1725:22, 1739:4, 1741:13, 1741:17, 1755:8, 1759:6, 1764:12, 1764:20, 1780:5, 1786:11, 1795:11, 1795:12, 1806:13, 1807:5, 1809:21, 1812:22, 1814:25, 1821:3, 1862:13</p> <p>importation [2] - 1772:24, 1808:9</p> <p>importations [1] - 1645:23</p> <p>imported [4] - 1805:21, 1806:11, 1806:15, 1807:16</p> <p>importer [1] - 1717:23</p> <p>importing [3] - 1716:3, 1718:4, 1762:11</p> <p>impression [2] - 1813:11, 1813:14</p> <p>Imran [2] - 1692:23, 1693:9</p> <p>IMs [1] - 1850:4</p> <p>in-between [1] - 1642:2</p> <p>incapable [1] - 1809:2</p> <p>inception [1] - 1695:23</p> <p>inch [1] - 1736:14</p> <p>inches [1] - 1759:22</p>
I		
<p>ID [1] - 1764:6</p>		

<p>incident [6] - 1792:10, 1792:11, 1793:25</p> <p>include [3] - 1821:25, 1822:13, 1822:24</p> <p>included [1] - 1738:23</p> <p>includes [2] - 1777:9, 1848:17</p> <p>including [3] - 1702:13, 1787:9, 1804:9</p> <p>inconsistent [3] - 1779:3, 1779:4, 1852:7</p> <p>incredible [4] - 1722:15, 1722:16, 1722:21, 1725:4</p> <p>independent [1] - 1823:7</p> <p>Indian [1] - 1733:8</p> <p>indicating [2] - 1655:22, 1736:21</p> <p>indicating [2] - 1762:19, 1809:11</p> <p>indication [1] - 1806:18</p> <p>indictment [7] - 1640:18, 1784:13, 1784:25, 1808:23, 1809:20, 1809:21, 1841:24</p> <p>indirectly [2] - 1713:3, 1727:22</p> <p>individual [4] - 1701:23, 1702:4, 1767:17, 1822:18</p> <p>individuals [1] - 1672:6</p> <p>induce [2] - 1845:15, 1845:16</p> <p>infer [3] - 1817:19, 1817:20, 1839:15</p> <p>inferences [2] - 1641:18, 1752:6</p> <p>infinite [2] - 1749:13, 1755:21</p> <p>influence [3] - 1644:15, 1704:5, 1711:16</p> <p>info [1] - 1717:15</p> <p>informant [3] - 1813:10, 1813:19, 1827:9</p> <p>informants [1] - 1814:14</p> <p>information [72] - 1653:24, 1666:1, 1666:4, 1666:5, 1666:10, 1666:13, 1666:14, 1679:1, 1681:1, 1697:8, 1699:21, 1709:22, 1714:4, 1714:5, 1717:21, 1718:22, 1735:12, 1742:20, 1743:9, 1743:16, 1746:8, 1746:13, 1748:2, 1752:3, 1752:25, 1761:14, 1765:1, 1765:7, 1765:24, 1766:9, 1767:17, 1768:1, 1769:2, 1777:4, 1784:20, 1784:25, 1785:14, 1786:15, 1787:17, 1787:19, 1788:2, 1790:10, 1790:12, 1790:13, 1791:11, 1791:13, 1801:24, 1802:1, 1804:21, 1817:7, 1818:14, 1818:16, 1819:11, 1819:15, 1823:6, 1827:8, 1835:5, 1843:15, 1843:18, 1843:19, 1843:21, 1844:2, 1844:19, 1844:21, 1846:23, 1849:9, 1850:9, 1851:10, 1851:25, 1859:10, 1869:15</p> <p>informed [2] - 1666:10, 1802:2</p> <p>informs [1] - 1856:24</p> <p>ingredients [1] - 1795:9</p> <p>initial [2] - 1765:9, 1840:20</p> <p>inmate [9] - 1713:18, 1714:7, 1715:10, 1733:16, 1736:22, 1765:10, 1793:2, 1794:23, 1795:4</p>	<p>inmates [1] - 1713:15</p> <p>innocence [4] - 1801:25, 1848:16, 1852:5</p> <p>innocent [4] - 1833:25, 1846:17, 1846:22, 1847:5</p> <p>innocently [1] - 1851:18</p> <p>innocents [1] - 1832:20</p> <p>innocuous [1] - 1839:12</p> <p>inquires [1] - 1802:4</p> <p>inside [3] - 1691:8, 1709:19, 1763:9</p> <p>insisted [3] - 1842:20, 1857:12, 1857:13</p> <p>inspect [3] - 1716:18, 1804:11, 1809:5</p> <p>inspected [1] - 1763:9</p> <p>instant [16] - 1646:21, 1647:5, 1691:21, 1691:22, 1716:24, 1719:8, 1719:16, 1719:25, 1754:20, 1754:21, 1754:24, 1757:19, 1758:1, 1758:5, 1758:8, 1759:1</p> <p>instead [4] - 1724:22, 1748:10, 1748:12, 1748:14</p> <p>instruct [4] - 1654:22, 1656:14, 1711:9, 1869:12</p> <p>instructed [2] - 1656:7, 1656:23</p> <p>instructing [2] - 1662:21, 1670:22</p> <p>instruction [10] - 1676:17, 1677:1, 1696:4, 1696:6, 1696:20, 1820:15, 1820:23, 1845:10, 1845:13</p> <p>instructions [14] - 1655:2, 1655:4, 1662:19, 1670:12, 1671:21, 1678:24, 1678:25, 1711:8, 1780:2, 1792:23, 1808:2, 1820:19, 1827:19, 1847:3</p> <p>instructs [1] - 1689:12</p> <p>insufficient [1] - 1797:6</p> <p>intend [3] - 1694:20, 1782:22, 1863:9</p> <p>intended [10] - 1776:8, 1781:10, 1787:25, 1788:3, 1857:16, 1857:18, 1862:20, 1862:23, 1863:9, 1866:17</p> <p>intending [3] - 1863:1, 1864:16, 1864:17</p> <p>intent [10] - 1665:10, 1676:3, 1780:8, 1780:25, 1781:21, 1827:16, 1827:18, 1827:20</p> <p>intention [3] - 1706:14, 1838:8, 1845:14</p> <p>intentional [1] - 1772:17</p> <p>intentionally [2] - 1771:20, 1839:4</p> <p>intercept [8] - 1718:25, 1720:13, 1720:14, 1763:6, 1802:11, 1807:6, 1807:10, 1807:21</p> <p>intercepted [3] - 1664:9, 1719:14, 1719:21</p> <p>interception [1] - 1718:7</p> <p>interceptions [1] - 1720:17</p> <p>intercom [1] - 1766:4</p> <p>intercoms [1] - 1766:5</p> <p>interested [4] - 1703:23, 1786:4, 1794:11, 1816:8</p> <p>interesting [9] - 1707:25, 1708:2, 1736:4, 1805:6, 1835:16, 1840:2,</p>	<p>1856:7, 1859:25, 1862:21</p> <p>intermediary [1] - 1830:21</p> <p>international [1] - 1734:5</p> <p>internet [1] - 1869:15</p> <p>interrupt [2] - 1728:9, 1790:21</p> <p>interrupting [1] - 1739:21</p> <p>interview [19] - 1767:5, 1777:8, 1783:15, 1783:24, 1791:2, 1792:13, 1792:14, 1792:15, 1793:13, 1793:24, 1794:1, 1794:3, 1794:7, 1794:12, 1809:25, 1823:11, 1826:1, 1853:5, 1853:6</p> <p>interviewed [4] - 1707:2, 1720:16, 1788:9, 1823:3</p> <p>interviewing [1] - 1843:16</p> <p>interviews [2] - 1848:12, 1853:7</p> <p>intimately [1] - 1790:14</p> <p>intimidate [5] - 1655:24, 1678:8, 1749:7, 1772:19, 1783:10</p> <p>intimidated [1] - 1776:21</p> <p>intimidating [1] - 1708:23</p> <p>intimidation [4] - 1640:16, 1640:20, 1677:10, 1711:15</p> <p>introduce [3] - 1683:10, 1688:10, 1823:22</p> <p>introduced [3] - 1692:11, 1719:6, 1824:12</p> <p>inventory [1] - 1761:9</p> <p>investigate [1] - 1733:24</p> <p>investigated [1] - 1731:1</p> <p>investigating [2] - 1828:9, 1852:23</p> <p>investigation [25] - 1679:24, 1704:16, 1704:24, 1727:12, 1736:21, 1746:17, 1746:18, 1747:6, 1750:3, 1753:3, 1765:25, 1778:9, 1789:1, 1791:20, 1791:23, 1791:25, 1792:2, 1792:5, 1808:17, 1817:25, 1823:6, 1823:7, 1831:22, 1849:6, 1860:7</p> <p>investigative [3] - 1829:5, 1849:11, 1863:21</p> <p>investigator [40] - 1679:3, 1723:16, 1723:23, 1731:2, 1737:8, 1737:17, 1741:20, 1752:20, 1755:12, 1757:3, 1757:4, 1757:17, 1765:2, 1765:13, 1765:14, 1767:3, 1767:22, 1769:2, 1770:4, 1772:17, 1787:16, 1788:10, 1788:17, 1791:24, 1794:3, 1796:19, 1796:21, 1797:1, 1809:17, 1819:1, 1829:9, 1831:23, 1832:7, 1834:14, 1851:3, 1858:1, 1863:23, 1864:4, 1864:9</p> <p>Investigator [1] - 1863:18</p> <p>investigator's [2] - 1856:21, 1856:22</p> <p>investigators [29] - 1765:4, 1765:25, 1767:20, 1778:18, 1786:5, 1786:16, 1788:12, 1788:13, 1788:19, 1788:23, 1793:8, 1794:10, 1796:23, 1796:24, 1810:7, 1810:17, 1826:23, 1838:19, 1839:3, 1850:12, 1850:14, 1853:1, 1854:9, 1855:8, 1855:21, 1856:4,</p>
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<p>1858:2, 1860:5 invite [5] - 1725:9, 1738:13, 1738:14, 1753:20, 1832:2 invited [1] - 1842:16 invoice [2] - 1716:12, 1717:22 involved [34] - 1645:9, 1648:14, 1650:5, 1650:17, 1652:6, 1669:10, 1700:10, 1702:10, 1702:14, 1703:1, 1730:13, 1749:6, 1750:25, 1751:1, 1757:11, 1757:25, 1758:3, 1763:16, 1763:18, 1766:13, 1772:7, 1774:7, 1774:12, 1774:13, 1774:15, 1790:11, 1790:14, 1790:24, 1838:17, 1849:1, 1856:15, 1857:9 involvement [6] - 1645:5, 1645:10, 1678:12, 1680:25, 1784:7 involving [1] - 1680:15 Ireland [3] - 1763:18, 1763:19, 1763:20 Irizarry [2] - 1803:8, 1847:9 Irizarry's [1] - 1803:24 IRVING [1] - 1639:6 Irving [119] - 1639:20, 1642:13, 1644:10, 1644:12, 1644:18, 1646:14, 1664:15, 1666:22, 1667:17, 1671:20, 1671:22, 1679:16, 1679:22, 1681:1, 1681:2, 1681:6, 1687:5, 1689:12, 1689:22, 1690:5, 1690:9, 1690:14, 1692:2, 1703:7, 1708:12, 1710:12, 1710:14, 1710:20, 1711:20, 1711:21, 1712:14, 1716:24, 1716:25, 1717:13, 1717:15, 1717:23, 1719:8, 1720:2, 1722:15, 1726:11, 1727:4, 1727:8, 1729:10, 1730:17, 1730:23, 1733:5, 1734:24, 1735:3, 1735:23, 1737:2, 1737:9, 1737:16, 1737:24, 1738:4, 1742:9, 1742:15, 1743:23, 1744:12, 1745:4, 1745:6, 1745:7, 1745:13, 1746:5, 1749:5, 1749:6, 1750:9, 1750:10, 1750:12, 1750:15, 1753:22, 1753:25, 1754:8, 1754:13, 1754:15, 1754:19, 1755:6, 1755:9, 1759:15, 1760:11, 1760:15, 1761:13, 1761:14, 1762:2, 1762:18, 1764:2, 1764:19, 1766:13, 1767:19, 1767:24, 1768:7, 1768:21, 1769:21, 1770:3, 1771:12, 1771:20, 1771:25, 1772:6, 1772:16, 1773:20, 1774:11, 1783:16, 1783:17, 1783:21, 1785:13, 1789:10, 1789:22, 1790:2, 1792:3, 1792:4, 1805:16, 1809:3, 1835:13, 1850:1, 1853:19, 1857:22, 1858:6 Irving's [3] - 1742:1, 1748:24, 1852:2 irving's [1] - 1679:21 Islamist [2] - 1843:12, 1844:4 isolation [2] - 1838:20, 1838:21 issue [10] - 1658:22, 1661:4, 1670:11, 1674:6, 1674:21, 1686:10, 1709:12, 1723:4, 1723:5, 1723:6 issues [3] - 1668:15, 1674:20, 1706:6</p>	<p>itself [4] - 1748:10, 1753:9, 1806:25, 1858:12</p> <p style="text-align: center;">J</p> <p>jacket [1] - 1832:12 Jackson [1] - 1834:15 Jagnarain [17] - 1667:3, 1683:5, 1685:23, 1702:24, 1703:2, 1746:2, 1785:24, 1822:8, 1826:19, 1841:7, 1841:10, 1841:15, 1844:10, 1845:17, 1847:10 Jagnarain's [1] - 1852:10 jail [21] - 1650:10, 1654:16, 1667:19, 1668:4, 1672:12, 1765:11, 1783:19, 1783:20, 1786:7, 1786:15, 1792:12, 1792:18, 1792:20, 1793:8, 1793:23, 1794:21, 1794:22, 1794:25, 1807:24, 1810:1 jails [2] - 1777:17, 1783:15 Jainairne [11] - 1664:8, 1664:12, 1664:16, 1665:5, 1665:9, 1665:10, 1665:11, 1665:12, 1667:1, 1691:19, 1712:15 Jainari [3] - 1687:11, 1687:12, 1687:16 Jamaican [1] - 1715:8 Janieri [1] - 1680:24 January [9] - 1662:6, 1663:14, 1663:16, 1679:7, 1820:8, 1822:1, 1822:14, 1840:22, 1852:8 JAVIER [1] - 1639:19 Jerry [3] - 1654:3, 1699:6, 1699:25 Jetsen [1] - 1686:7 job [19] - 1642:21, 1644:25, 1645:1, 1668:18, 1668:20, 1669:2, 1722:2, 1722:3, 1729:8, 1734:1, 1734:8, 1734:10, 1734:12, 1739:4, 1769:14, 1769:15, 1833:7, 1845:7, 1852:21 Joe [1] - 1732:8 JOHN [1] - 1639:9 joined [1] - 1815:11 Juanita [7] - 1742:24, 1750:18, 1757:5, 1757:6, 1757:7, 1757:10, 1757:13 JUDGE [1] - 1639:10 Judge [34] - 1724:5, 1724:17, 1728:7, 1779:1, 1779:5, 1779:6, 1780:5, 1780:13, 1783:24, 1786:22, 1792:22, 1795:9, 1795:11, 1798:25, 1803:8, 1806:13, 1807:12, 1819:10, 1820:15, 1820:17, 1837:5, 1845:2, 1845:10, 1845:11, 1845:23, 1846:14, 1846:18, 1847:1, 1847:8, 1847:9, 1848:11, 1852:8 judge [41] - 1654:22, 1655:1, 1655:3, 1655:4, 1656:7, 1656:14, 1671:23, 1671:25, 1689:3, 1689:9, 1694:5, 1694:8, 1711:8, 1711:10, 1711:11,</p>	<p>1712:5, 1769:9, 1771:6, 1771:7, 1771:15, 1771:21, 1771:22, 1772:2, 1772:6, 1773:17, 1777:7, 1798:7, 1800:4, 1803:8, 1803:24, 1805:8, 1805:12, 1805:14, 1806:2, 1808:13, 1810:25, 1822:2, 1829:3, 1833:16, 1844:22, 1868:17 Judge's [1] - 1780:2 judge's [4] - 1807:19, 1808:2, 1827:17, 1827:19 judgment [1] - 1828:14 July [32] - 1664:17, 1687:4, 1687:6, 1690:7, 1690:9, 1700:2, 1700:5, 1706:20, 1707:15, 1707:16, 1707:20, 1708:8, 1708:9, 1708:12, 1757:6, 1757:7, 1763:17, 1764:1, 1765:17, 1765:19, 1766:13, 1766:24, 1853:2, 1855:9, 1855:11, 1855:15, 1855:20, 1856:5, 1859:22 jump [1] - 1665:4 jumping [1] - 1726:14 June [84] - 1652:19, 1654:1, 1661:25, 1663:1, 1670:24, 1671:19, 1671:22, 1673:1, 1673:20, 1674:6, 1674:13, 1676:4, 1676:5, 1676:6, 1676:9, 1676:10, 1676:11, 1676:13, 1678:18, 1678:21, 1679:9, 1679:18, 1679:19, 1679:21, 1680:10, 1681:5, 1683:23, 1697:9, 1698:12, 1704:16, 1707:7, 1716:25, 1717:9, 1717:10, 1717:18, 1717:23, 1717:24, 1719:8, 1719:10, 1726:12, 1741:24, 1742:3, 1742:14, 1742:22, 1744:11, 1744:12, 1744:16, 1744:24, 1744:25, 1748:24, 1750:7, 1750:17, 1751:10, 1751:12, 1751:22, 1752:18, 1753:12, 1753:16, 1754:3, 1754:11, 1758:24, 1759:1, 1759:2, 1759:3, 1760:12, 1763:15, 1764:18, 1769:16, 1805:19, 1827:25, 1828:1, 1836:15, 1836:19, 1836:25, 1839:24, 1839:25, 1843:9, 1844:3, 1852:20, 1853:2 junk [1] - 1814:24 juror [3] - 1640:3, 1640:5, 1647:13 jurors [1] - 1655:8 jury [35] - 1639:10, 1640:1, 1640:8, 1640:24, 1641:1, 1661:18, 1669:11, 1683:15, 1691:2, 1691:6, 1691:7, 1691:14, 1721:1, 1722:24, 1740:2, 1741:2, 1741:4, 1741:6, 1742:3, 1742:17, 1744:1, 1745:13, 1745:14, 1753:6, 1775:2, 1798:15, 1798:21, 1798:22, 1798:23, 1800:14, 1803:7, 1825:3, 1848:14, 1864:14 Jury [1] - 1869:20 justice [18] - 1643:1, 1643:5, 1666:17, 1666:19, 1666:22, 1666:25, 1667:6, 1667:7, 1704:19, 1711:4, 1711:5, 1711:7, 1711:14, 1711:23, 1713:7, 1776:20, 1779:13, 1823:15</p>
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<div>Justice^[3] - 1793:19, 1794:25, 1795:6</div> <div>Justin^[3] - 1719:16, 1759:16, 1759:19</div>	<div>1846:17, 1846:19, 1846:22, 1847:5, 1847:10, 1847:14, 1847:15, 1848:8, 1851:14, 1854:17, 1858:8, 1859:6, 1859:12, 1860:8, 1860:18, 1861:2, 1865:9, 1865:18, 1868:16, 1868:18, 1868:20</div> <div>khan^[1] - 1854:3</div> <div>Khan's^[20] - 1643:25, 1645:4, 1645:5, 1645:17, 1645:19, 1645:22, 1646:5, 1650:9, 1653:13, 1669:25, 1677:12, 1678:14, 1683:12, 1684:2, 1684:17, 1813:17, 1840:16, 1841:13, 1841:15, 1848:15</div> <div>kick^[1] - 1814:10</div> <div>kicked^[1] - 1829:24</div> <div>kid^[2] - 1756:11, 1844:18</div> <div>kidding^[3] - 1648:15, 1816:15, 1842:1</div> <div>kidnap^[4] - 1687:20, 1687:21, 1688:3, 1689:19</div> <div>kidnapped^[1] - 1646:9</div> <div>kidnappers^[2] - 1654:10, 1654:12</div> <div>kidnapping^[4] - 1645:6, 1652:2, 1652:3, 1700:11</div> <div>kidnappings^[1] - 1652:6</div> <div>kill^[17] - 1651:14, 1668:9, 1676:17, 1677:18, 1678:8, 1678:25, 1680:20, 1704:20, 1731:7, 1731:11, 1745:25, 1747:14, 1764:20, 1764:24, 1828:20, 1831:5, 1831:8</div> <div>killed^[12] - 1649:8, 1649:9, 1649:10, 1649:14, 1649:21, 1649:22, 1651:19, 1667:19, 1668:4, 1677:6, 1832:20</div> <div>killer^[2] - 1701:9, 1764:24</div> <div>killers^[8] - 1648:21, 1653:13, 1654:12, 1790:16, 1847:17, 1848:4, 1849:13, 1849:15</div> <div>killings^[7] - 1650:10, 1651:15, 1731:12, 1744:16, 1744:17, 1754:4, 1831:20</div> <div>kind^[18] - 1647:4, 1660:13, 1669:10, 1730:10, 1733:20, 1736:19, 1749:20, 1749:21, 1757:4, 1810:18, 1830:25, 1845:12, 1854:23, 1865:20, 1865:23, 1867:11, 1868:3</div> <div>kinds^[3] - 1659:6, 1728:23, 1843:14</div> <div>King^[1] - 1865:21</div> <div>Kingdom^[1] - 1718:16</div> <div>Klan^[1] - 1678:24</div> <div>knock^[1] - 1653:11</div> <div>knowing^[8] - 1719:2, 1731:19, 1743:12, 1768:25, 1772:17, 1780:16, 1780:17, 1808:3</div> <div>knowingly^[1] - 1771:20</div> <div>knowledge^[10] - 1667:22, 1668:11, 1702:3, 1702:6, 1702:9, 1791:13, 1807:14, 1817:13, 1817:14</div> <div>known^[14] - 1645:21, 1664:8, 1667:1, 1667:2, 1667:21, 1676:1, 1684:3, 1686:24, 1702:1, 1733:18, 1738:4, 1782:1, 1816:23</div> <div>knows^[48] - 1647:4, 1647:24,</div>	<div>1648:11, 1650:4, 1650:17, 1651:22, 1654:13, 1654:14, 1654:15, 1657:2, 1657:3, 1658:2, 1658:3, 1670:21, 1673:14, 1676:21, 1681:17, 1681:19, 1683:21, 1688:2, 1690:5, 1698:3, 1701:13, 1701:25, 1707:24, 1710:19, 1710:20, 1725:7, 1726:20, 1730:18, 1746:24, 1748:1, 1748:7, 1751:1, 1763:20, 1769:1, 1771:3, 1790:13, 1790:14, 1790:16</div>
<div>K</div>	<div>L</div>	
<div>Kahn's^[1] - 1792:17</div> <div>keep^[19] - 1678:18, 1680:24, 1686:2, 1689:4, 1724:11, 1724:13, 1771:13, 1784:10, 1793:17, 1799:6, 1799:23, 1813:23, 1838:24, 1840:18, 1849:22, 1850:5, 1852:15, 1853:3, 1862:15</div> <div>keeping^[2] - 1813:21, 1814:13</div> <div>keeps^[2] - 1726:14, 1758:1</div> <div>kept^[7] - 1679:10, 1796:3, 1796:8, 1812:7, 1839:4, 1842:2, 1846:17</div> <div>Kern^[2] - 1759:17, 1759:19</div> <div>Kevin^[14] - 1645:21, 1646:19, 1684:3, 1684:4, 1684:8, 1684:10, 1684:13, 1684:16, 1684:25, 1685:2, 1690:1, 1692:12, 1693:11, 1694:4</div> <div>Khan^[188] - 1643:3, 1645:3, 1645:4, 1645:8, 1645:12, 1645:17, 1646:8, 1646:24, 1646:25, 1650:5, 1650:9, 1650:13, 1650:14, 1650:17, 1652:25, 1653:20, 1653:21, 1653:24, 1658:19, 1662:6, 1662:14, 1662:16, 1662:19, 1663:20, 1664:11, 1664:12, 1667:16, 1668:2, 1668:9, 1670:6, 1670:12, 1670:22, 1671:20, 1671:22, 1672:12, 1672:14, 1672:17, 1674:18, 1676:24, 1679:4, 1679:7, 1679:12, 1679:19, 1679:21, 1679:23, 1680:2, 1680:13, 1680:15, 1680:17, 1680:18, 1681:2, 1681:18, 1681:25, 1682:22, 1683:10, 1683:13, 1684:15, 1684:20, 1685:20, 1687:1, 1692:24, 1693:9, 1696:6, 1696:19, 1696:20, 1697:24, 1699:9, 1701:23, 1702:2, 1702:3, 1702:6, 1702:7, 1702:9, 1702:10, 1706:4, 1708:9, 1710:13, 1710:14, 1710:19, 1711:20, 1711:21, 1712:1, 1712:10, 1712:22, 1719:10, 1719:15, 1724:20, 1725:18, 1730:15, 1731:22, 1732:7, 1735:2, 1742:2, 1745:18, 1746:5, 1748:24, 1752:20, 1752:22, 1752:23, 1753:8, 1753:15, 1753:16, 1761:25, 1776:10, 1776:22, 1782:9, 1784:20, 1785:1, 1786:16, 1787:4, 1787:10, 1787:12, 1787:21, 1801:1, 1801:3, 1801:5, 1801:9, 1801:14, 1801:15, 1801:16, 1801:22, 1802:18, 1802:20, 1802:22, 1803:9, 1808:5, 1810:2, 1810:15, 1810:20, 1811:10, 1817:1, 1818:3, 1818:22, 1819:4, 1819:5, 1820:12, 1820:13, 1820:14, 1820:21, 1820:22, 1822:13, 1822:18, 1823:6, 1832:21, 1835:10, 1839:21, 1840:1, 1840:18, 1840:19, 1841:2, 1841:5, 1841:9, 1841:13, 1841:15, 1841:18, 1841:21, 1841:23, 1844:23, 1844:24,</div>	<div>lab^[2] - 1763:10</div> <div>laborer^[8] - 1668:20, 1668:23, 1668:24, 1712:9, 1729:8, 1734:15, 1739:3</div> <div>lack^[2] - 1696:18, 1771:11</div> <div>ladies^[44] - 1644:18, 1656:4, 1668:15, 1679:2, 1690:25, 1691:18, 1706:21, 1710:10, 1715:24, 1719:20, 1721:13, 1721:14, 1722:7, 1722:22, 1736:2, 1736:23, 1737:25, 1739:6, 1739:20, 1741:10, 1741:25, 1748:18, 1749:9, 1750:4, 1753:19, 1762:8, 1762:25, 1763:12, 1764:25, 1765:15, 1765:17, 1766:22, 1769:8, 1770:2, 1770:25, 1772:8, 1773:6, 1775:2, 1791:5, 1794:6, 1797:4, 1824:16, 1828:16, 1868:4</div> <div>Lall^[1] - 1759:9</div> <div>language^[1] - 1839:18</div> <div>lapse^[1] - 1684:17</div> <div>laptop^[6] - 1716:14, 1718:21, 1719:18, 1802:16, 1802:19, 1802:21</div> <div>laptops^[13] - 1716:1, 1716:16, 1716:21, 1718:18, 1718:20, 1718:22, 1719:21, 1720:3, 1720:15, 1802:5, 1802:9, 1803:3, 1805:2</div> <div>larger^[4] - 1802:6, 1802:17, 1803:2, 1826:23</div> <div>Larry^[1] - 1865:21</div> <div>last^[19] - 1640:3, 1642:2, 1671:4, 1704:7, 1715:24, 1722:24, 1739:14, 1764:13, 1764:15, 1770:15, 1773:14, 1776:7, 1776:10, 1804:14, 1820:11, 1828:22, 1833:21, 1866:14, 1869:17</div> <div>lasted^[2] - 1776:11, 1833:22</div> <div>lasts^[1] - 1838:5</div> <div>late^[4] - 1799:3, 1799:9, 1812:1, 1833:13</div> <div>launch^[1] - 1859:25</div> <div>law^[65] - 1642:9, 1642:10, 1642:21, 1642:24, 1642:25, 1644:23, 1655:3, 1672:15, 1711:9, 1717:24, 1720:21, 1720:23, 1731:3, 1736:6, 1736:17, 1771:6, 1771:8, 1773:22, 1775:18, 1775:24, 1775:25, 1777:1, 1778:11, 1779:1, 1779:2, 1780:5, 1781:6,</div>	

<p>1781:7, 1781:8, 1782:5, 1782:22, 1783:23, 1785:6, 1786:25, 1788:10, 1789:25, 1791:2, 1805:23, 1806:14, 1807:8, 1807:11, 1807:18, 1808:3, 1808:22, 1809:24, 1810:6, 1811:1, 1811:7, 1811:8, 1811:12, 1823:19, 1826:13, 1828:8, 1845:4, 1845:9, 1845:12, 1845:23, 1846:1, 1850:17, 1850:22, 1866:10, 1866:13, 1866:25, 1868:7, 1869:12</p> <p>lawful [8] - 1787:21, 1810:23, 1810:25, 1823:18, 1830:12, 1845:5, 1845:21, 1846:11</p> <p>lawfully [2] - 1722:3, 1781:8</p> <p>Lawrence [3] - 1796:19, 1796:21, 1797:1</p> <p>LAWRENCE [1] - 1639:20</p> <p>lawsuit [1] - 1863:8</p> <p>lawsuits [1] - 1869:8</p> <p>lawyer [49] - 1644:13, 1653:20, 1657:1, 1668:13, 1777:6, 1777:8, 1778:8, 1778:10, 1781:8, 1781:9, 1783:25, 1784:1, 1784:24, 1789:4, 1791:8, 1791:9, 1792:17, 1792:23, 1792:25, 1793:4, 1794:23, 1795:21, 1797:9, 1803:25, 1812:8, 1812:11, 1812:12, 1816:13, 1816:17, 1819:16, 1820:7, 1823:13, 1831:10, 1833:18, 1839:15, 1841:2, 1845:7, 1848:7, 1851:18, 1853:24, 1856:24, 1861:16, 1866:2, 1866:5, 1867:12, 1868:11</p> <p>lawyer's [3] - 1641:16, 1777:9, 1810:17</p> <p>lawyers [43] - 1641:8, 1642:21, 1685:25, 1735:21, 1756:6, 1756:10, 1778:11, 1778:17, 1778:24, 1778:25, 1784:19, 1786:16, 1790:5, 1790:6, 1791:12, 1796:23, 1797:10, 1798:4, 1805:3, 1805:8, 1808:16, 1808:18, 1814:15, 1817:20, 1817:21, 1817:22, 1817:24, 1818:17, 1820:8, 1831:15, 1831:16, 1838:3, 1839:14, 1839:16, 1839:19, 1839:23, 1850:5, 1850:11, 1850:13, 1854:9, 1868:2</p> <p>lead [2] - 1672:21, 1737:16</p> <p>leading [1] - 1784:20</p> <p>leads [1] - 1851:22</p> <p>learn [4] - 1674:5, 1679:15, 1780:2, 1840:1</p> <p>learned [4] - 1777:4, 1841:22, 1842:22, 1843:15</p> <p>least [4] - 1770:9, 1776:13, 1835:3, 1845:17</p> <p>leave [18] - 1671:14, 1680:3, 1686:14, 1698:23, 1698:24, 1699:6, 1699:25, 1707:12, 1747:19, 1749:22, 1755:2, 1773:14, 1776:1, 1784:5, 1829:1, 1836:16, 1847:2, 1862:12</p> <p>leaves [10] - 1680:5, 1742:21, 1747:20, 1748:13, 1752:15, 1755:3, 1755:4,</p>	<p>1792:18, 1855:10, 1869:20</p> <p>leaving [1] - 1840:15</p> <p>led [1] - 1847:14</p> <p>Ledge [1] - 1771:2</p> <p>ledger [2] - 1664:11, 1685:12</p> <p>ledgers [5] - 1683:10, 1702:24, 1787:6, 1841:7, 1841:13</p> <p>Lee [1] - 1788:17</p> <p>left [10] - 1705:3, 1724:9, 1746:19, 1746:21, 1749:16, 1751:6, 1754:19, 1760:18, 1773:16, 1826:22</p> <p>left-hand [1] - 1826:22</p> <p>legal [21] - 1668:13, 1668:14, 1680:5, 1722:4, 1736:16, 1736:17, 1736:18, 1736:21, 1736:22, 1736:23, 1736:24, 1747:20, 1774:6, 1787:21, 1788:10, 1789:2, 1811:6, 1811:7, 1815:14, 1827:7, 1831:8</p> <p>legalese [1] - 1643:7</p> <p>legally [1] - 1722:3</p> <p>legitimate [1] - 1818:22</p> <p>length [2] - 1778:13, 1785:5</p> <p>Lenny [2] - 1822:19, 1822:24</p> <p>Lenny's [1] - 1822:24</p> <p>Leslie [8] - 1704:25, 1705:2, 1743:14, 1743:15, 1746:2, 1751:19, 1753:13, 1759:3</p> <p>Leslyn [47] - 1667:2, 1679:1, 1704:7, 1704:24, 1706:3, 1706:20, 1707:2, 1707:16, 1708:14, 1708:17, 1710:15, 1713:3, 1713:4, 1743:2, 1743:4, 1770:16, 1770:18, 1842:12, 1842:13, 1843:12, 1843:20, 1843:24, 1843:25, 1844:1, 1857:13, 1857:20, 1858:7, 1860:10, 1860:22, 1860:23, 1861:1, 1861:4, 1861:10, 1861:13, 1861:14, 1861:15, 1862:6, 1862:14, 1862:18, 1862:19, 1863:14, 1863:16, 1864:9, 1864:23, 1865:13</p> <p>Leslyn's [2] - 1710:17, 1858:9</p> <p>less [4] - 1756:2, 1763:20, 1789:5, 1823:8</p> <p>Letch [1] - 1771:2</p> <p>letter [32] - 1685:15, 1685:19, 1735:11, 1735:14, 1735:16, 1735:17, 1735:18, 1735:24, 1736:1, 1736:3, 1775:11, 1775:14, 1775:16, 1775:22, 1775:23, 1776:2, 1786:25, 1793:5, 1793:7, 1793:10, 1793:15, 1803:20, 1803:22, 1836:12, 1836:13, 1854:16, 1860:21, 1860:22, 1860:23, 1861:4</p> <p>letters [9] - 1784:23, 1804:4, 1804:17, 1804:20, 1804:21, 1860:24, 1860:25, 1861:1</p> <p>letting [1] - 1701:4</p> <p>lexicon [3] - 1831:15, 1831:16</p> <p>liar [1] - 1797:11</p> <p>Liberty [2] - 1703:14</p> <p>license [2] - 1642:9</p> <p>licensed [2] - 1796:21, 1851:2</p>	<p>lie [38] - 1648:2, 1651:9, 1658:2, 1664:2, 1665:8, 1665:17, 1665:25, 1666:6, 1666:8, 1666:17, 1668:16, 1668:24, 1669:4, 1670:10, 1670:15, 1689:9, 1712:9, 1714:11, 1714:17, 1715:16, 1715:19, 1715:22, 1724:17, 1733:3, 1734:12, 1735:3, 1737:6, 1737:7, 1792:25, 1797:6, 1797:21, 1811:9, 1821:11, 1845:18</p> <p>lied [15] - 1656:5, 1656:6, 1660:2, 1660:16, 1665:2, 1665:18, 1714:10, 1715:13, 1776:22, 1783:18, 1792:12, 1792:23, 1797:21, 1834:20</p> <p>lies [8] - 1671:17, 1785:18, 1793:10, 1797:6, 1823:14, 1834:18, 1834:19, 1834:21</p> <p>Lieutenant [1] - 1793:22</p> <p>life [7] - 1655:6, 1727:4, 1774:1, 1774:24, 1810:14, 1849:18</p> <p>light [4] - 1708:15, 1738:8, 1747:4, 1836:21</p> <p>likely [4] - 1644:16, 1692:11, 1709:20, 1854:18</p> <p>Lilly [9] - 1767:12, 1767:13, 1767:15, 1782:1, 1782:2, 1782:6, 1782:13, 1784:4, 1803:12</p> <p>limb [2] - 1861:9, 1863:6</p> <p>limits [2] - 1676:16, 1777:6</p> <p>Limpy [3] - 1719:10, 1719:12, 1719:15</p> <p>line [39] - 1652:19, 1654:1, 1654:4, 1681:10, 1681:12, 1689:6, 1703:17, 1710:23, 1711:1, 1727:20, 1728:19, 1729:9, 1731:9, 1737:10, 1738:18, 1742:23, 1742:25, 1743:22, 1748:21, 1750:18, 1751:7, 1754:12, 1767:9, 1768:8, 1770:16, 1777:18, 1778:8, 1778:21, 1794:2, 1805:3, 1821:5, 1821:6, 1827:14, 1835:18, 1836:6, 1861:14</p> <p>lines [2] - 1764:13, 1764:15</p> <p>LIPTON [1] - 1639:17</p> <p>Lipton [1] - 1862:11</p> <p>list [19] - 1679:5, 1712:16, 1732:22, 1757:1, 1764:5, 1764:18, 1764:23, 1764:24, 1790:9, 1796:10, 1796:22, 1796:24, 1796:25, 1797:2, 1818:12, 1826:20, 1826:21, 1851:1, 1851:4</p> <p>listed [1] - 1823:4</p> <p>listen [34] - 1655:4, 1671:8, 1672:23, 1706:14, 1711:10, 1718:8, 1726:21, 1744:20, 1745:19, 1772:2, 1778:2, 1780:5, 1784:6, 1792:6, 1794:1, 1802:25, 1806:12, 1808:2, 1812:2, 1814:21, 1815:2, 1817:14, 1824:1, 1824:2, 1824:9, 1827:17, 1861:10, 1861:11, 1861:17, 1861:19, 1862:2, 1862:3, 1868:13</p> <p>listened [3] - 1719:13, 1815:3</p> <p>listening [1] - 1861:25</p> <p>lists [1] - 1789:8</p>
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<p>literally [1] - 1760:2 litmus [1] - 1648:7 live [1] - 1684:8 lives [1] - 1778:17 living [3] - 1684:6, 1687:8, 1720:6 Lloyd [7] - 1646:3, 1646:10, 1651:2, 1651:4, 1651:12, 1653:2, 1653:12 lo [1] - 1802:18 loathe [1] - 1791:6 local [3] - 1783:15, 1794:21, 1794:22 locate [4] - 1725:17, 1725:19, 1739:13, 1765:7 located [1] - 1743:17 location [1] - 1670:18 locations [1] - 1842:17 Loft [1] - 1686:8 lofty [1] - 1643:6 log [2] - 1679:11, 1679:17 logged [1] - 1679:6 logic [5] - 1744:8, 1746:7, 1756:2, 1756:4, 1756:16 logical [5] - 1688:5, 1734:4, 1739:22, 1739:23, 1748:17 logically [3] - 1748:10, 1756:21, 1773:10 Lombard [1] - 1686:7 London [3] - 1720:7, 1851:12 lonely [1] - 1789:7 look [110] - 1647:20, 1649:20, 1650:21, 1651:11, 1658:7, 1659:4, 1660:17, 1661:24, 1662:10, 1663:8, 1667:12, 1667:13, 1670:5, 1671:7, 1671:10, 1674:9, 1677:10, 1677:17, 1680:11, 1681:22, 1683:15, 1685:20, 1686:11, 1698:3, 1699:17, 1701:12, 1701:16, 1710:5, 1710:6, 1710:22, 1719:5, 1719:19, 1720:12, 1725:22, 1727:20, 1734:12, 1735:17, 1736:10, 1737:4, 1737:25, 1738:14, 1742:10, 1742:22, 1743:21, 1743:23, 1745:21, 1750:17, 1751:25, 1752:2, 1752:21, 1754:24, 1758:8, 1759:7, 1759:8, 1760:2, 1760:10, 1760:18, 1761:17, 1762:10, 1764:4, 1765:2, 1766:6, 1766:21, 1767:1, 1768:6, 1770:14, 1770:15, 1772:24, 1773:9, 1773:23, 1774:15, 1776:6, 1777:11, 1778:8, 1780:20, 1780:21, 1781:17, 1781:20, 1782:23, 1784:2, 1788:3, 1790:17, 1791:10, 1791:25, 1814:9, 1822:16, 1822:18, 1825:8, 1839:12, 1840:8, 1841:2, 1842:4, 1843:3, 1847:19, 1847:21, 1848:5, 1848:13, 1852:25, 1860:3, 1862:1, 1866:15, 1866:19, 1866:20 looked [6] - 1656:5, 1679:11, 1715:5, 1731:8, 1842:13, 1844:24 looking [23] - 1647:12, 1655:18, 1701:13, 1727:14, 1727:25, 1729:9, 1751:19, 1757:13, 1757:14, 1776:17, 1812:8, 1812:9, 1812:11, 1812:12,</p>	<p>1824:7, 1828:12, 1833:19, 1835:5, 1839:25, 1842:15, 1860:5, 1862:4, 1869:14 lookout [1] - 1645:11 looks [3] - 1647:2, 1692:24, 1773:24 loose [1] - 1781:6 lose [6] - 1694:3, 1756:13, 1774:13, 1774:14, 1793:21, 1854:1 loses [1] - 1854:18 losing [3] - 1659:2, 1812:25, 1813:4 lost [4] - 1642:17, 1692:13, 1762:7, 1776:21 loves [1] - 1824:14 low [3] - 1790:7, 1828:24, 1865:21 lower [10] - 1793:23, 1860:8, 1860:9, 1860:11, 1860:16, 1860:18, 1861:2, 1862:16, 1862:17 lowered [1] - 1712:23 loyal [4] - 1672:12, 1672:14, 1672:17, 1811:10 loyalist [1] - 1865:9 luck [3] - 1698:4, 1755:16 Lucky [2] - 1724:25, 1725:1 Luis [1] - 1679:3 lump [1] - 1726:5 lunch [5] - 1739:22, 1739:24, 1740:7, 1741:11, 1794:17 lying [18] - 1666:1, 1666:3, 1669:19, 1686:3, 1715:18, 1787:13, 1797:5, 1800:18, 1830:16, 1841:6, 1841:15, 1842:7, 1844:11, 1844:18, 1847:7, 1847:9, 1847:10</p> <p style="text-align: center;">M</p> <p>M-A-N [1] - 1818:25 machine [2] - 1805:1, 1805:19 Maher [2] - 1760:20, 1760:23 mail [20] - 1664:14, 1681:8, 1687:4, 1712:14, 1716:3, 1717:11, 1748:3, 1763:22, 1764:1, 1764:2, 1764:4, 1764:11, 1764:12, 1767:23, 1767:25, 1790:19, 1836:1, 1843:4, 1855:22 mailed [2] - 1681:10, 1843:5 mails [5] - 1828:3, 1828:7, 1850:3, 1850:10, 1850:12 man [31] - 1644:15, 1684:19, 1684:22, 1685:21, 1686:19, 1699:15, 1735:6, 1735:8, 1737:1, 1737:20, 1784:22, 1784:25, 1785:2, 1785:3, 1785:11, 1787:4, 1787:5, 1787:6, 1790:23, 1802:8, 1818:25, 1826:16, 1827:22, 1836:16, 1841:12, 1841:13, 1841:16, 1841:17, 1842:1 Man [1] - 1668:7 managed [2] - 1645:22, 1684:2 managing [1] - 1684:21 Mancuso [1] - 1716:14 Manhattan [3] - 1716:7, 1793:23,</p>	<p>1794:21 maniac [1] - 1680:17 Mankind [1] - 1698:9 mannered [1] - 1648:19 manufactured [1] - 1716:15 manufactures [1] - 1718:15 March [17] - 1686:20, 1686:21, 1686:22, 1713:17, 1713:20, 1713:23, 1770:15, 1770:19, 1770:20, 1784:3, 1792:8, 1792:9, 1793:25, 1803:20, 1803:21, 1809:25 marine [1] - 1731:4 Mark [2] - 1647:18, 1692:1 market [1] - 1645:24 marshal [2] - 1788:15, 1788:16 Marshal [1] - 1713:15 Martin [10] - 1768:4, 1768:22, 1788:16, 1813:2, 1813:3, 1813:4, 1831:24, 1832:1 Martin's [1] - 1768:6 marvel [1] - 1838:3 master [1] - 1845:12 match [1] - 1716:19 material [6] - 1736:18, 1736:19, 1795:5, 1795:10, 1795:11, 1795:12 materiality [1] - 1795:10 materials [2] - 1747:9, 1752:7 matter [19] - 1671:12, 1717:8, 1723:9, 1725:14, 1725:15, 1728:7, 1734:20, 1772:8, 1790:16, 1804:4, 1815:14, 1817:12, 1838:4, 1854:4, 1866:7, 1866:22, 1869:22 matters [1] - 1723:10 mayhem [1] - 1790:4 Mazzella [14] - 1738:12, 1738:17, 1791:24, 1809:16, 1827:23, 1828:2, 1828:6, 1828:21, 1833:23, 1833:24, 1834:14, 1834:16, 1834:17, 1863:18 Mazzella's [1] - 1856:6 MCC [13] - 1679:4, 1679:17, 1707:19, 1710:14, 1732:19, 1735:23, 1785:15, 1793:23, 1794:20, 1794:21, 1859:20, 1859:23, 1860:2 mean [26] - 1641:14, 1650:2, 1669:3, 1669:24, 1670:20, 1677:16, 1683:2, 1684:18, 1699:4, 1700:21, 1700:25, 1707:8, 1725:3, 1728:8, 1728:14, 1729:16, 1732:3, 1737:14, 1748:25, 1808:10, 1813:14, 1815:21, 1853:15, 1857:9, 1864:22 meaning [10] - 1717:12, 1746:17, 1752:24, 1754:16, 1764:17, 1788:3, 1811:16, 1845:23, 1856:12, 1856:15 meaningful [3] - 1644:8, 1824:15 meaningfully [1] - 1661:17 means [12] - 1668:24, 1669:6, 1748:18, 1753:6, 1755:22, 1755:23, 1758:19, 1763:20, 1771:10, 1771:13, 1815:14 meant [8] - 1660:24, 1674:23, 1687:7,</p>
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<p>1718:8, 1719:1, 1813:17, 1839:10, 1840:18</p> <p>measure [1] - 1800:17</p> <p>mechanical [1] - 1639:24</p> <p>mechanically [1] - 1806:25</p> <p>media [1] - 1865:23</p> <p>meet [17] - 1665:15, 1681:14, 1709:1, 1709:10, 1709:13, 1766:11, 1784:5, 1810:15, 1823:12, 1830:22, 1835:24, 1842:16, 1846:11, 1855:11, 1855:13, 1856:9, 1857:12</p> <p>meeting [119] - 1649:1, 1649:4, 1650:8, 1652:8, 1662:1, 1663:2, 1667:18, 1671:22, 1674:5, 1674:13, 1676:10, 1679:20, 1679:21, 1682:1, 1683:23, 1687:6, 1698:12, 1700:5, 1706:20, 1707:21, 1708:8, 1708:11, 1710:13, 1710:17, 1719:9, 1723:19, 1723:20, 1725:23, 1726:7, 1726:10, 1726:14, 1726:15, 1727:2, 1727:3, 1727:5, 1727:6, 1727:8, 1729:9, 1733:19, 1734:20, 1735:9, 1736:25, 1737:3, 1737:10, 1738:5, 1738:16, 1738:21, 1738:25, 1741:12, 1741:13, 1741:16, 1741:17, 1741:24, 1741:25, 1742:3, 1742:6, 1742:11, 1742:13, 1742:16, 1742:23, 1743:7, 1743:8, 1743:21, 1743:25, 1744:2, 1744:3, 1744:7, 1744:9, 1748:24, 1751:18, 1754:3, 1754:4, 1754:5, 1754:8, 1754:11, 1754:25, 1755:6, 1755:9, 1755:17, 1755:25, 1756:25, 1757:1, 1757:7, 1757:22, 1759:3, 1759:6, 1763:15, 1763:17, 1765:19, 1765:21, 1765:22, 1766:11, 1766:12, 1766:14, 1766:15, 1766:24, 1767:23, 1767:25, 1768:24, 1792:10, 1815:24, 1818:2, 1827:25, 1835:20, 1836:19, 1855:14, 1855:15, 1855:20, 1856:19, 1857:13, 1858:9, 1863:23, 1863:24</p> <p>meetings [4] - 1646:16, 1742:4, 1784:16, 1815:18</p> <p>meets [3] - 1783:9, 1801:1, 1856:16</p> <p>member [3] - 1662:17, 1662:18, 1815:10</p> <p>members [9] - 1644:1, 1645:17, 1646:5, 1661:18, 1668:3, 1673:17, 1686:22, 1695:1, 1718:13</p> <p>membership [1] - 1771:18</p> <p>memo [65] - 1662:5, 1679:21, 1680:8, 1719:9, 1738:2, 1738:7, 1738:13, 1738:14, 1738:16, 1739:5, 1739:6, 1739:20, 1744:11, 1744:12, 1744:16, 1746:12, 1746:13, 1746:15, 1747:1, 1747:2, 1747:13, 1747:25, 1748:12, 1748:15, 1748:24, 1749:8, 1749:9, 1749:16, 1749:17, 1749:18, 1750:5, 1752:12, 1753:12, 1753:14, 1758:24, 1759:1, 1759:2, 1759:5, 1759:7, 1760:12, 1761:24, 1765:19, 1766:6,</p>	<p>1769:16, 1771:1, 1774:6, 1784:2, 1784:18, 1820:3, 1820:5, 1820:13, 1822:14, 1826:24, 1826:25, 1828:19, 1839:6, 1842:25, 1843:1, 1843:8, 1858:5, 1858:6</p> <p>memorandum [4] - 1738:20, 1738:24, 1770:15, 1770:21</p> <p>memos [9] - 1737:23, 1737:25, 1745:2, 1752:22, 1787:17, 1842:24, 1849:25, 1850:4</p> <p>men [13] - 1645:11, 1648:18, 1652:2, 1654:14, 1654:15, 1688:2, 1735:4, 1785:7, 1785:8, 1785:13</p> <p>menacing [2] - 1735:17, 1735:18</p> <p>mention [3] - 1659:6, 1739:17, 1796:19</p> <p>mentioned [18] - 1678:19, 1683:13, 1697:4, 1704:22, 1782:19, 1786:23, 1788:13, 1788:14, 1820:10, 1822:19, 1839:1, 1839:13, 1857:1, 1857:2, 1857:4</p> <p>mentions [3] - 1677:22, 1693:6, 1839:13</p> <p>merely [2] - 1771:22, 1771:23</p> <p>Mervin [3] - 1729:23, 1730:2, 1730:11</p> <p>Mervin's [1] - 1730:12</p> <p>message [19] - 1691:21, 1691:22, 1742:22, 1753:11, 1753:12, 1754:20, 1754:21, 1754:25, 1757:19, 1758:5, 1758:9, 1759:1, 1789:24, 1790:1, 1791:3, 1836:7, 1839:17, 1855:11, 1869:4</p> <p>messages [12] - 1643:23, 1646:21, 1647:5, 1716:24, 1719:8, 1719:16, 1720:1, 1758:1, 1836:17, 1868:2, 1869:2, 1869:8</p> <p>met [15] - 1671:20, 1681:8, 1681:10, 1692:22, 1693:2, 1694:4, 1694:5, 1707:21, 1707:24, 1731:1, 1751:9, 1774:1, 1784:4, 1863:14, 1869:17</p> <p>methodology [4] - 1665:19, 1665:21, 1665:24, 1715:23</p> <p>methods [3] - 1694:22, 1695:1, 1696:24</p> <p>meting [1] - 1858:11</p> <p>Miami [2] - 1788:18, 1793:8</p> <p>might [22] - 1651:18, 1651:20, 1686:13, 1696:12, 1698:8, 1709:16, 1726:24, 1727:24, 1731:15, 1767:14, 1769:19, 1770:1, 1800:10, 1801:2, 1812:20, 1818:5, 1832:8, 1832:10, 1839:15, 1852:3, 1863:22, 1865:12</p> <p>mighty [2] - 1865:25, 1866:1</p> <p>military [2] - 1707:6, 1841:21</p> <p>mind [26] - 1678:11, 1678:13, 1678:16, 1678:18, 1680:24, 1682:12, 1693:17, 1693:19, 1693:21, 1771:14, 1772:17, 1775:8, 1776:24, 1784:10, 1790:1, 1793:17, 1801:22, 1820:16, 1820:21, 1828:24, 1829:23, 1830:3, 1846:20,</p>	<p>1862:15, 1864:11, 1865:4</p> <p>mindful [1] - 1822:17</p> <p>minds [2] - 1681:25, 1706:23</p> <p>mindset [3] - 1792:6, 1809:15, 1809:19</p> <p>mine [1] - 1745:9</p> <p>minute [4] - 1650:7, 1770:24, 1794:17, 1863:7</p> <p>minutes [30] - 1645:2, 1654:18, 1659:19, 1672:24, 1673:20, 1674:12, 1676:14, 1678:1, 1687:14, 1687:17, 1690:23, 1691:13, 1705:6, 1705:7, 1740:5, 1748:4, 1755:5, 1799:5, 1799:6, 1799:16, 1799:25, 1800:7, 1832:23, 1834:3, 1834:4, 1834:7, 1836:10, 1837:12, 1860:15</p> <p>misconduct [1] - 1810:9</p> <p>misconstrued [2] - 1752:4, 1753:10</p> <p>misdirect [1] - 1660:3</p> <p>misogynist [1] - 1812:17</p> <p>misrepresented [1] - 1783:22</p> <p>missing [4] - 1640:3, 1640:5, 1796:6, 1796:7</p> <p>mission [1] - 1869:5</p> <p>missions [1] - 1692:8</p> <p>mistake [3] - 1823:19, 1833:25, 1834:10</p> <p>mistaken [1] - 1742:9</p> <p>misunderstanding [1] - 1715:20</p> <p>mix [1] - 1711:18</p> <p>mode [1] - 1749:14</p> <p>module [5] - 1760:22, 1761:1, 1761:3, 1761:12, 1806:6</p> <p>Mogatoni [5] - 1645:21, 1646:19, 1684:3, 1685:1, 1685:2</p> <p>Mohammed [2] - 1686:6</p> <p>moment [17] - 1659:3, 1659:9, 1659:16, 1660:2, 1719:7, 1738:4, 1775:8, 1776:19, 1783:23, 1785:17, 1795:18, 1815:7, 1822:12, 1822:17, 1832:5, 1839:5, 1862:5</p> <p>moments [1] - 1844:11</p> <p>Monday [1] - 1708:7</p> <p>money [75] - 1643:13, 1658:20, 1660:12, 1660:25, 1661:11, 1661:13, 1661:22, 1672:11, 1673:18, 1674:15, 1674:17, 1674:18, 1674:20, 1676:12, 1677:9, 1678:19, 1679:24, 1680:9, 1680:12, 1681:15, 1685:22, 1686:17, 1704:5, 1704:25, 1705:1, 1705:3, 1706:5, 1706:8, 1706:16, 1707:3, 1707:4, 1707:16, 1707:18, 1709:5, 1709:18, 1710:5, 1710:9, 1712:25, 1713:5, 1724:13, 1744:14, 1750:2, 1777:25, 1813:1, 1813:5, 1826:14, 1826:15, 1827:4, 1830:15, 1854:7, 1854:8, 1854:11, 1854:19, 1855:23, 1856:5, 1856:25, 1857:4, 1857:5, 1857:12, 1859:6, 1859:12, 1861:7, 1862:16, 1862:17, 1862:19, 1862:24,</p>
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<p>1863:1, 1863:3, 1864:10, 1864:11, 1867:10</p> <p>monitored [2] - 1679:5, 1781:16</p> <p>monitoring [1] - 1796:9</p> <p>month [2] - 1685:22, 1833:21</p> <p>months [1] - 1776:10</p> <p>morning [18] - 1640:2, 1641:2, 1642:8, 1692:4, 1692:5, 1779:6, 1791:18, 1799:17, 1800:1, 1814:4, 1824:5, 1826:15, 1828:16, 1833:7, 1833:14, 1836:18, 1837:12, 1837:15</p> <p>MORRIS [1] - 1639:14</p> <p>most [15] - 1669:23, 1686:8, 1738:9, 1741:13, 1741:14, 1741:16, 1741:17, 1752:5, 1764:12, 1789:20, 1789:21, 1804:23, 1812:22, 1821:7, 1825:5</p> <p>mother [37] - 1673:24, 1674:3, 1674:7, 1676:16, 1677:6, 1677:16, 1677:18, 1678:9, 1678:18, 1678:20, 1678:25, 1680:3, 1680:10, 1680:13, 1680:16, 1680:21, 1683:1, 1704:10, 1704:20, 1744:17, 1745:25, 1747:12, 1747:14, 1747:18, 1750:2, 1753:10, 1754:4, 1764:16, 1764:20, 1764:22, 1811:3, 1824:14, 1826:3, 1826:4, 1826:6</p> <p>mother's [1] - 1677:7</p> <p>motion [7] - 1671:23, 1736:23, 1753:6, 1774:6, 1821:25, 1822:1, 1822:25</p> <p>motions [1] - 1662:7</p> <p>motive [11] - 1724:16, 1773:17, 1773:18, 1773:20, 1774:10, 1797:6, 1853:18, 1853:19, 1853:21, 1854:16, 1854:19</p> <p>mouth [1] - 1732:13</p> <p>move [4] - 1668:14, 1697:13, 1725:21, 1855:7</p> <p>moved [1] - 1697:11</p> <p>MR [67] - 1640:7, 1640:11, 1640:12, 1640:13, 1640:15, 1640:22, 1642:5, 1642:7, 1647:8, 1647:15, 1656:17, 1656:21, 1658:1, 1659:21, 1660:7, 1673:1, 1673:3, 1673:23, 1674:15, 1676:1, 1678:4, 1687:19, 1688:7, 1688:10, 1689:1, 1690:23, 1691:11, 1691:17, 1692:16, 1702:19, 1702:21, 1706:1, 1721:11, 1721:12, 1722:1, 1728:7, 1728:10, 1728:12, 1739:23, 1740:5, 1741:9, 1760:1, 1775:1, 1780:1, 1798:1, 1798:9, 1798:12, 1798:25, 1799:5, 1799:8, 1799:11, 1799:14, 1799:18, 1799:21, 1799:25, 1800:4, 1800:7, 1800:9, 1800:12, 1800:16, 1820:1, 1837:7, 1838:2, 1838:3, 1855:7, 1859:1, 1868:1</p> <p>multiple [1] - 1782:2</p> <p>murder [20] - 1645:6, 1645:15, 1646:12, 1649:5, 1650:5, 1697:5, 1699:18, 1699:20, 1699:23, 1777:23, 1816:10, 1816:19, 1817:1, 1831:1, 1837:4, 1838:16, 1847:19</p>	<p>murdered [5] - 1664:10, 1677:12, 1683:7, 1832:23, 1833:2</p> <p>murderers [1] - 1849:13</p> <p>murdering [1] - 1662:16</p> <p>murderous [1] - 1832:14</p> <p>murders [6] - 1645:7, 1649:5, 1835:11, 1838:16, 1849:1, 1849:19</p> <p>muscle [1] - 1646:6</p> <p>must [6] - 1693:23, 1756:17, 1766:21, 1770:8, 1770:17, 1803:10</p> <p>mutually [2] - 1804:11, 1827:16</p> <p>Myers [10] - 1718:12, 1718:14, 1720:5, 1720:7, 1763:6, 1802:8, 1804:24, 1806:10, 1806:17</p>	<p>1764:9, 1766:9, 1770:16, 1770:18, 1793:2, 1793:17, 1795:8, 1799:11, 1803:4, 1803:5, 1812:14, 1832:6, 1837:14, 1837:16, 1842:18, 1851:14, 1852:22, 1861:7</p> <p>needed [8] - 1642:19, 1644:2, 1712:18, 1743:23, 1793:14, 1803:1, 1832:3</p> <p>needs [15] - 1673:7, 1673:8, 1677:4, 1678:9, 1678:22, 1680:12, 1685:11, 1692:10, 1709:5, 1710:5, 1718:1, 1739:16, 1742:19, 1743:4</p> <p>negotiated [2] - 1692:17, 1692:18</p> <p>negotiating [1] - 1860:11</p> <p>neighborhood [1] - 1832:4</p> <p>neighbors [1] - 1676:22</p> <p>nervous [3] - 1664:9, 1683:24, 1758:7</p> <p>network [2] - 1672:11, 1747:9</p> <p>neutralize [8] - 1658:11, 1658:19, 1659:13, 1745:12, 1830:7, 1830:9, 1830:11, 1831:5</p> <p>neutralized [3] - 1676:6, 1682:6, 1831:3</p> <p>neutralizing [1] - 1831:21</p> <p>never [72] - 1644:16, 1644:25, 1663:22, 1664:1, 1665:2, 1669:10, 1669:16, 1671:16, 1686:18, 1702:1, 1714:18, 1717:5, 1719:13, 1725:17, 1725:25, 1726:2, 1726:15, 1726:17, 1727:3, 1727:4, 1727:13, 1728:24, 1729:4, 1730:14, 1730:25, 1731:1, 1731:20, 1734:11, 1738:8, 1741:21, 1747:4, 1752:8, 1759:9, 1763:9, 1763:11, 1774:1, 1787:11, 1792:15, 1793:3, 1808:13, 1809:17, 1814:22, 1819:2, 1819:4, 1821:3, 1823:4, 1824:24, 1829:13, 1836:25, 1840:16, 1840:21, 1841:25, 1842:2, 1847:12, 1847:13, 1852:3, 1857:1, 1857:2, 1857:3, 1860:22, 1860:23, 1863:14, 1863:16, 1863:19, 1868:9</p> <p>nevertheless [2] - 1665:16, 1821:20</p> <p>NEW [1] - 1639:1</p> <p>new [6] - 1708:14, 1720:8, 1828:18, 1855:8, 1856:5</p> <p>New [14] - 1639:5, 1639:23, 1697:4, 1698:25, 1699:8, 1699:24, 1699:25, 1716:12, 1719:17, 1751:19, 1783:6, 1787:11, 1846:25, 1865:22</p> <p>news [2] - 1855:13, 1865:21</p> <p>newspaper [1] - 1725:13</p> <p>newspapers [1] - 1817:16</p> <p>next [38] - 1640:25, 1657:5, 1663:19, 1674:5, 1675:3, 1676:10, 1681:12, 1688:14, 1693:1, 1705:10, 1708:11, 1710:16, 1717:7, 1721:16, 1739:12, 1740:8, 1759:25, 1763:17, 1770:1, 1779:15, 1797:22, 1819:18, 1833:13, 1834:11, 1834:17, 1835:25, 1836:6, 1836:15, 1837:17, 1837:19, 1848:20,</p>
N		
<p>N-72 [2] - 1760:2, 1763:8</p> <p>name [61] - 1646:6, 1646:18, 1667:16, 1668:1, 1668:5, 1684:4, 1684:10, 1684:11, 1684:12, 1684:17, 1684:21, 1685:4, 1685:6, 1685:8, 1689:9, 1689:13, 1689:25, 1693:2, 1693:6, 1701:25, 1709:19, 1715:3, 1715:11, 1715:14, 1715:15, 1727:4, 1734:21, 1734:22, 1737:19, 1742:11, 1759:10, 1766:6, 1768:15, 1781:23, 1782:1, 1782:3, 1782:19, 1787:15, 1788:20, 1795:4, 1796:20, 1797:15, 1812:15, 1813:3, 1820:6, 1820:11, 1822:24, 1823:2, 1850:3, 1850:8, 1850:9, 1851:1, 1857:2, 1857:3, 1861:15</p> <p>named [8] - 1651:4, 1724:25, 1725:1, 1733:16, 1812:13, 1822:19, 1842:4, 1844:24</p> <p>names [12] - 1646:17, 1667:3, 1670:8, 1685:2, 1722:19, 1743:23, 1757:1, 1781:24, 1782:2, 1820:10, 1851:25</p> <p>Nancy [2] - 1720:7, 1720:9</p> <p>narcotics [1] - 1791:6</p> <p>natural [8] - 1782:21, 1782:24, 1783:10, 1784:17, 1788:2, 1788:4, 1810:14, 1862:24</p> <p>nature [1] - 1725:4</p> <p>near [3] - 1676:19, 1676:20, 1687:9</p> <p>nearly [1] - 1796:7</p> <p>necessarily [1] - 1750:20</p> <p>necessary [3] - 1786:13, 1789:23, 1793:6</p> <p>need [59] - 1642:14, 1643:18, 1644:6, 1658:11, 1669:22, 1670:14, 1671:25, 1672:10, 1673:6, 1673:17, 1673:18, 1676:12, 1677:19, 1680:12, 1681:15, 1684:14, 1689:10, 1692:21, 1694:2, 1703:24, 1704:3, 1704:6, 1704:21, 1706:17, 1708:4, 1708:15, 1709:13, 1709:24, 1710:2, 1710:8, 1715:24, 1717:3, 1717:6, 1718:1, 1735:20, 1743:9, 1745:20, 1745:21, 1745:22,</p>		

<p>1856:17, 1856:18, 1858:8, 1858:16, 1860:13, 1860:20, 1867:15</p> <p>nice [8] - 1641:3, 1641:5, 1646:6, 1652:4, 1700:11, 1769:18, 1832:12, 1869:18</p> <p>nicely [1] - 1696:11</p> <p>nicer [1] - 1655:18</p> <p>nickname [1] - 1812:14</p> <p>nicknames [1] - 1646:17</p> <p>Nicole [7] - 1714:1, 1714:15, 1715:4, 1715:5, 1715:8, 1792:13, 1793:1</p> <p>Nigel [23] - 1781:25, 1782:13, 1782:14, 1782:15, 1782:16, 1782:18, 1782:20, 1782:24, 1783:1, 1783:9, 1783:16, 1783:19, 1783:24, 1784:11, 1784:12, 1784:13, 1784:17, 1785:14, 1787:18, 1823:12, 1841:22</p> <p>night [7] - 1660:12, 1833:6, 1833:12, 1833:13, 1834:3, 1868:24, 1869:21</p> <p>nightly [1] - 1865:21</p> <p>nights [1] - 1789:7</p> <p>nine [6] - 1679:19, 1737:10, 1800:4, 1833:4, 1837:9, 1855:14</p> <p>nobody [3] - 1706:12, 1708:18, 1869:4</p> <p>non [2] - 1809:2, 1824:6</p> <p>non-working [1] - 1809:2</p> <p>none [4] - 1671:12, 1742:16, 1762:19, 1787:9</p> <p>nonsense [1] - 1703:22</p> <p>North [1] - 1788:17</p> <p>notarize [1] - 1856:9</p> <p>note [11] - 1751:18, 1771:18, 1786:11, 1821:3, 1836:23, 1838:10, 1839:9, 1839:10, 1839:12, 1843:11</p> <p>notebook [1] - 1782:5</p> <p>notes [2] - 1800:5, 1837:9</p> <p>nothing [69] - 1656:10, 1656:22, 1661:18, 1723:18, 1723:20, 1723:21, 1724:2, 1724:9, 1725:9, 1733:22, 1737:17, 1737:22, 1739:3, 1741:21, 1741:22, 1753:3, 1753:12, 1753:13, 1756:13, 1757:15, 1759:3, 1759:4, 1761:6, 1764:8, 1765:16, 1770:4, 1771:4, 1774:11, 1774:12, 1776:18, 1777:15, 1777:20, 1780:22, 1781:1, 1781:2, 1781:4, 1782:7, 1783:25, 1784:12, 1800:18, 1804:1, 1809:1, 1810:15, 1820:24, 1820:25, 1824:19, 1824:20, 1824:21, 1826:20, 1827:3, 1827:15, 1833:16, 1834:16, 1835:8, 1839:10, 1839:18, 1843:16, 1844:20, 1845:21, 1853:7, 1853:9, 1857:16</p> <p>notice [2] - 1783:25, 1784:1</p> <p>noticed [2] - 1640:9, 1861:22</p> <p>notion [1] - 1817:20</p> <p>November [2] - 1720:2, 1761:24</p> <p>number [19] - 1647:22, 1660:12, 1663:14, 1702:13, 1712:23, 1717:15, 1733:5, 1733:17, 1749:14, 1755:21, 1760:15, 1768:15, 1786:20, 1796:22,</p>	<p>1806:7, 1806:8, 1820:16, 1820:17, 1848:9</p> <p>numbers [7] - 1647:16, 1647:17, 1647:23, 1718:21, 1791:11, 1791:12, 1791:17</p> <p>nutsy [1] - 1834:5</p>	<p>offered [4] - 1661:22, 1763:10, 1818:21, 1828:18</p> <p>offering [2] - 1660:22, 1661:11</p> <p>offers [2] - 1661:12, 1706:8</p> <p>Office [1] - 1849:10</p> <p>office [50] - 1647:9, 1663:17, 1671:14, 1681:5, 1689:21, 1691:23, 1700:19, 1706:10, 1712:20, 1716:12, 1742:1, 1744:1, 1745:15, 1748:9, 1752:12, 1755:5, 1760:13, 1760:15, 1761:3, 1773:3, 1773:5, 1775:13, 1775:18, 1775:24, 1775:25, 1782:5, 1785:6, 1806:6, 1807:9, 1807:18, 1808:7, 1808:11, 1808:12, 1808:19, 1808:22, 1809:24, 1810:6, 1810:8, 1811:8, 1814:11, 1826:13, 1829:24, 1836:17, 1842:21, 1857:20, 1857:23, 1858:4, 1859:14, 1864:5</p> <p>officer [10] - 1714:2, 1715:2, 1715:6, 1715:9, 1757:21, 1790:20, 1793:1, 1797:5, 1797:14, 1797:21</p> <p>officers [3] - 1646:7, 1707:6, 1800:18</p> <p>offices [5] - 1716:7, 1717:25, 1786:25, 1850:17, 1850:22</p> <p>official [1] - 1801:6</p> <p>often [1] - 1735:22</p> <p>Ohio [5] - 1786:1, 1786:6, 1788:1, 1788:2, 1793:15</p> <p>OK [1] - 1717:8</p> <p>old [4] - 1715:7, 1720:10, 1773:21, 1853:23</p> <p>once [13] - 1714:9, 1769:10, 1772:9, 1783:20, 1784:9, 1784:14, 1814:24, 1824:19, 1825:25, 1829:10, 1847:21, 1853:6, 1856:2</p> <p>one [162] - 1640:8, 1642:25, 1643:23, 1644:10, 1648:9, 1652:11, 1652:20, 1664:6, 1667:4, 1668:17, 1669:22, 1670:8, 1670:13, 1670:14, 1670:17, 1682:1, 1685:16, 1686:12, 1686:15, 1692:1, 1697:7, 1703:12, 1707:19, 1707:22, 1710:13, 1710:24, 1711:6, 1713:11, 1716:16, 1716:19, 1717:3, 1718:12, 1719:19, 1725:9, 1729:19, 1731:3, 1731:4, 1731:13, 1732:6, 1732:13, 1732:20, 1733:6, 1733:9, 1734:7, 1734:9, 1734:21, 1736:14, 1739:10, 1741:14, 1741:15, 1742:4, 1743:12, 1744:12, 1747:12, 1749:14, 1750:17, 1751:25, 1756:11, 1757:18, 1758:4, 1758:16, 1759:2, 1759:18, 1761:13, 1762:17, 1762:21, 1763:22, 1764:5, 1764:6, 1764:13, 1764:15, 1765:4, 1765:7, 1765:18, 1771:13, 1774:5, 1775:24, 1776:25, 1778:16, 1778:23, 1781:25, 1783:7, 1783:14, 1785:22, 1785:23, 1785:24, 1786:5, 1788:21, 1790:17, 1791:8, 1791:9, 1793:8, 1795:8, 1795:9, 1796:2, 1796:3, 1800:22, 1801:10, 1802:6,</p>
O		
<p>o'clock [5] - 1639:6, 1679:19, 1740:1, 1740:6, 1833:6</p> <p>oath [2] - 1833:19, 1848:10</p> <p>object [1] - 1656:17</p> <p>objection [1] - 1702:19</p> <p>objections [1] - 1787:1</p> <p>objective [3] - 1644:9, 1644:24, 1681:21</p> <p>objectives [1] - 1681:19</p> <p>obligated [1] - 1866:12</p> <p>obligation [5] - 1661:17, 1694:6, 1726:16, 1777:9, 1837:9</p> <p>obligations [3] - 1642:23, 1642:24, 1657:2</p> <p>obstruct [13] - 1643:1, 1666:19, 1666:22, 1666:24, 1667:5, 1667:7, 1704:19, 1711:5, 1711:7, 1711:14, 1711:23, 1779:13, 1784:12</p> <p>obstructed [1] - 1776:20</p> <p>obstructing [2] - 1666:17, 1823:15</p> <p>obstruction [5] - 1643:5, 1711:4, 1713:7, 1787:24, 1845:20</p> <p>obtained [4] - 1784:19, 1786:12, 1786:14, 1786:15</p> <p>obvious [3] - 1642:10, 1642:15, 1828:21</p> <p>obviously [9] - 1642:17, 1670:17, 1738:19, 1772:3, 1781:15, 1781:16, 1827:9, 1842:18, 1860:6</p> <p>occasion [2] - 1714:8, 1842:16</p> <p>occur [1] - 1742:16</p> <p>occurred [10] - 1640:1, 1691:2, 1691:6, 1741:2, 1788:11, 1795:17, 1795:23, 1798:15, 1798:21, 1838:25</p> <p>occurrence [1] - 1868:11</p> <p>occurring [2] - 1771:24, 1771:25</p> <p>occurs [1] - 1766:4</p> <p>October [5] - 1716:10, 1716:21, 1802:3, 1802:4, 1806:16</p> <p>OF [3] - 1639:1, 1639:3, 1639:9</p> <p>offend [1] - 1814:8</p> <p>offending [2] - 1807:15, 1814:8</p> <p>offense [4] - 1795:9, 1806:2, 1846:6, 1867:14</p> <p>offenses [4] - 1780:25, 1790:3, 1827:21, 1849:19</p> <p>offensive [1] - 1850:20</p> <p>offer [15] - 1643:13, 1643:14, 1643:15, 1660:23, 1672:21, 1686:17, 1713:3, 1713:5, 1805:8, 1828:20</p>		

<p>1802:16, 1802:17, 1806:6, 1806:7, 1806:20, 1811:6, 1811:24, 1814:17, 1817:5, 1818:5, 1820:1, 1820:17, 1821:8, 1821:15, 1823:3, 1823:7, 1824:4, 1824:8, 1824:12, 1825:19, 1826:20, 1827:6, 1827:11, 1831:22, 1832:8, 1832:10, 1835:25, 1836:15, 1838:16, 1840:14, 1840:24, 1842:16, 1843:3, 1843:4, 1844:6, 1847:11, 1852:16, 1854:20, 1854:22, 1855:1, 1855:2, 1855:4, 1856:22, 1857:24, 1857:25, 1858:1, 1858:2, 1859:21, 1859:22, 1860:5, 1864:8, 1868:17, 1868:18, 1868:20, 1868:24, 1869:5</p> <p>ones [1] - 1854:14</p> <p>open [5] - 1642:12, 1803:17, 1810:17, 1838:1, 1849:16</p> <p>Open [1] - 1837:18</p> <p>opened [2] - 1776:9, 1776:12</p> <p>opening [8] - 1756:6, 1758:20, 1773:16, 1776:14, 1823:23, 1838:22, 1868:12</p> <p>openings [1] - 1641:7</p> <p>openly [2] - 1839:13</p> <p>operated [2] - 1719:10, 1793:23</p> <p>operating [1] - 1801:11</p> <p>operation [2] - 1857:16, 1863:2</p> <p>opinion [4] - 1680:5, 1725:24, 1747:20, 1777:3</p> <p>opportunity [7] - 1641:16, 1722:10, 1722:25, 1738:19, 1769:11, 1783:3, 1824:3</p> <p>opposite [3] - 1724:4, 1840:21, 1863:4</p> <p>option [5] - 1658:12, 1658:18, 1659:13, 1672:22, 1682:17</p> <p>options [1] - 1712:1</p> <p>order [14] - 1643:2, 1644:8, 1670:12, 1706:17, 1713:25, 1718:2, 1718:18, 1718:20, 1720:16, 1787:13, 1803:24, 1808:13, 1859:7</p> <p>orders [1] - 1653:14</p> <p>ordinarily [1] - 1794:18</p> <p>organization [4] - 1669:25, 1695:24, 1729:5, 1787:11</p> <p>organize [1] - 1825:3</p> <p>original [4] - 1804:5, 1804:11, 1809:5, 1809:6</p> <p>originally [1] - 1730:9</p> <p>otherwise [1] - 1719:2</p> <p>ought [3] - 1678:10, 1695:3, 1709:16</p> <p>outage [3] - 1759:11, 1759:14, 1760:12</p> <p>outcome [2] - 1768:18, 1768:20</p> <p>outrageous [1] - 1642:16</p> <p>outright [1] - 1668:24</p> <p>outside [8] - 1649:9, 1649:10, 1649:14, 1649:18, 1659:14, 1689:21, 1691:13, 1698:1</p> <p>overnight [2] - 1834:14</p> <p>overruled [1] - 1702:20</p>	<p>overstayed [2] - 1732:24, 1739:14</p> <p>owe [2] - 1652:22, 1652:23</p> <p>own [21] - 1664:21, 1666:19, 1705:3, 1713:6, 1714:20, 1724:11, 1725:3, 1736:9, 1768:14, 1789:15, 1816:1, 1825:9, 1828:6, 1828:14, 1830:18, 1832:13, 1837:9, 1843:17, 1854:7, 1867:11</p> <p>owned [1] - 1763:7</p> <p>owners [2] - 1718:13, 1793:19</p> <p style="text-align: center;">P</p> <p>p.m [1] - 1835:23</p> <p>Pablo [1] - 1650:24</p> <p>pack [1] - 1793:10</p> <p>pad [1] - 1830:24</p> <p>page [76] - 1640:11, 1640:13, 1640:25, 1652:19, 1654:1, 1656:13, 1657:5, 1658:17, 1659:12, 1662:23, 1663:9, 1663:12, 1663:19, 1675:3, 1678:1, 1684:9, 1685:20, 1687:16, 1688:14, 1689:6, 1689:20, 1690:13, 1690:15, 1693:1, 1693:10, 1694:11, 1695:8, 1697:9, 1698:13, 1703:12, 1705:8, 1705:10, 1707:20, 1716:12, 1721:16, 1727:14, 1727:20, 1728:19, 1729:8, 1729:9, 1730:1, 1731:9, 1731:25, 1733:4, 1736:10, 1737:10, 1738:18, 1739:7, 1740:8, 1742:23, 1743:21, 1748:21, 1750:17, 1751:4, 1754:11, 1759:25, 1765:5, 1767:4, 1768:7, 1770:21, 1779:15, 1797:22, 1800:4, 1804:7, 1812:23, 1814:16, 1819:18, 1820:9, 1820:10, 1837:17, 1837:19, 1856:18, 1858:16, 1867:15</p> <p>pages [2] - 1800:4, 1837:9</p> <p>paid [11] - 1722:17, 1724:7, 1724:11, 1724:12, 1832:12, 1854:3, 1854:5, 1854:8, 1854:19, 1856:9, 1856:12</p> <p>painfully [2] - 1642:10, 1642:14</p> <p>Panasonic [2] - 1802:6, 1802:7</p> <p>pants [1] - 1700:11</p> <p>paper [3] - 1656:2, 1770:7, 1796:17</p> <p>paperwork [1] - 1736:14</p> <p>paragraph [3] - 1764:15, 1784:3, 1848:9</p> <p>parallel [1] - 1803:14</p> <p>parents [4] - 1685:23, 1686:4, 1686:17, 1686:23</p> <p>Park [1] - 1793:24</p> <p>parked [1] - 1715:2</p> <p>parking [1] - 1819:13</p> <p>part [34] - 1644:23, 1652:7, 1663:22, 1681:20, 1704:15, 1708:25, 1730:8, 1731:8, 1735:1, 1735:8, 1737:1, 1737:2, 1737:3, 1737:18, 1744:21, 1745:7, 1750:15, 1755:4, 1761:23, 1764:12, 1792:20, 1806:11, 1812:22,</p>	<p>1813:9, 1813:16, 1813:17, 1814:21, 1816:7, 1826:23, 1849:3, 1854:24, 1858:6, 1860:3</p> <p>participate [1] - 1854:12</p> <p>participated [3] - 1838:16, 1848:10, 1848:16</p> <p>participating [1] - 1847:19</p> <p>particular [7] - 1663:3, 1738:2, 1766:9, 1771:18, 1829:4, 1855:2, 1859:21</p> <p>particularly [3] - 1663:12, 1816:8, 1829:8</p> <p>parties [2] - 1863:4, 1863:8</p> <p>partisan [2] - 1777:2, 1777:3</p> <p>partner [1] - 1645:19</p> <p>party [1] - 1839:22</p> <p>passed [1] - 1785:16</p> <p>passively [1] - 1719:1</p> <p>passport [1] - 1732:24</p> <p>password [1] - 1802:17</p> <p>past [2] - 1709:9, 1799:23</p> <p>patiently [1] - 1815:3</p> <p>Paul [60] - 1646:1, 1646:10, 1646:15, 1646:19, 1647:17, 1650:25, 1651:3, 1651:12, 1652:20, 1652:24, 1653:12, 1654:2, 1654:3, 1685:17, 1685:20, 1686:10, 1686:15, 1686:18, 1690:9, 1690:10, 1690:11, 1690:15, 1690:16, 1695:17, 1697:20, 1697:25, 1698:14, 1698:15, 1699:1, 1699:6, 1699:11, 1699:12, 1699:24, 1700:3, 1700:13, 1700:14, 1700:16, 1700:25, 1701:2, 1701:4, 1701:6, 1701:9, 1701:13, 1712:12, 1730:23, 1731:7, 1731:10, 1731:16, 1735:22, 1757:23, 1766:25, 1770:22, 1775:12, 1775:23, 1790:15, 1820:11, 1847:17, 1848:1, 1848:17</p> <p>Paulo [1] - 1646:20</p> <p>pause [4] - 1659:22, 1659:23, 1660:1</p> <p>pay [37] - 1660:19, 1660:22, 1660:24, 1661:3, 1673:9, 1673:12, 1673:17, 1676:12, 1678:7, 1678:23, 1679:14, 1682:17, 1704:2, 1704:10, 1704:13, 1706:10, 1708:2, 1708:3, 1710:8, 1710:18, 1712:20, 1720:8, 1812:4, 1827:7, 1832:13, 1848:20, 1854:4, 1854:18, 1855:22, 1862:23, 1863:1, 1864:11, 1864:16, 1864:17</p> <p>paying [16] - 1658:24, 1660:25, 1661:1, 1661:2, 1661:6, 1674:15, 1680:16, 1706:2, 1819:10, 1819:11, 1819:14, 1826:14, 1844:20, 1856:14</p> <p>payment [5] - 1658:19, 1706:11, 1706:22, 1707:16, 1752:6</p> <p>pays [1] - 1685:22</p> <p>peek [1] - 1810:18</p> <p>Pegasus [1] - 1716:11</p> <p>Pemberton [12] - 1667:2, 1697:1, 1697:15, 1699:16, 1699:17, 1700:14, 1701:17, 1701:22, 1702:18, 1772:7, 1826:10, 1844:17</p>
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<p>penal [3] - 1845:6, 1866:11, 1866:18</p> <p>penalized [1] - 1755:18</p> <p>penetrated [1] - 1855:12</p> <p>people [139] - 1643:10, 1644:10, 1646:13, 1648:11, 1648:13, 1648:14, 1651:5, 1651:19, 1651:24, 1651:25, 1652:25, 1653:3, 1654:8, 1655:24, 1661:3, 1661:22, 1666:23, 1667:19, 1668:4, 1669:23, 1670:3, 1670:7, 1670:9, 1670:10, 1672:6, 1672:12, 1672:13, 1674:8, 1676:12, 1676:22, 1676:25, 1677:9, 1680:17, 1681:7, 1683:19, 1685:13, 1692:1, 1695:10, 1695:11, 1695:15, 1695:17, 1696:13, 1696:17, 1698:21, 1701:2, 1702:13, 1706:2, 1707:9, 1711:13, 1711:24, 1720:6, 1723:9, 1723:14, 1724:22, 1724:23, 1725:2, 1725:7, 1725:18, 1725:19, 1730:22, 1730:24, 1731:1, 1731:8, 1732:9, 1732:10, 1734:22, 1734:23, 1737:12, 1739:13, 1745:21, 1745:24, 1746:19, 1746:21, 1747:9, 1749:7, 1751:8, 1751:15, 1751:19, 1752:5, 1758:2, 1771:4, 1771:5, 1773:25, 1777:22, 1783:8, 1786:9, 1787:9, 1789:8, 1790:3, 1790:7, 1790:13, 1790:15, 1791:13, 1791:16, 1801:12, 1803:18, 1804:24, 1812:10, 1812:11, 1813:15, 1813:16, 1813:17, 1814:21, 1817:7, 1817:8, 1823:14, 1826:17, 1827:1, 1827:10, 1830:2, 1831:14, 1832:3, 1832:15, 1842:4, 1843:16, 1847:16, 1848:4, 1849:1, 1849:11, 1849:12, 1849:13, 1851:11, 1851:12, 1852:14, 1853:3, 1853:4, 1853:5, 1853:7, 1853:20, 1858:2, 1863:8, 1867:12, 1869:8</p> <p>people's [2] - 1685:2, 1706:17</p> <p>percent [7] - 1723:17, 1736:24, 1750:6, 1754:7, 1756:7, 1817:23, 1821:8</p> <p>Pereria [10] - 1646:3, 1647:15, 1650:23, 1651:3, 1651:12, 1654:3, 1672:13, 1698:14, 1698:16, 1711:22</p> <p>perfect [6] - 1717:12, 1717:14, 1783:8, 1798:6, 1798:7, 1857:8</p> <p>perfectly [8] - 1777:7, 1784:8, 1789:2, 1792:14, 1810:25, 1811:12, 1827:7, 1833:17</p> <p>perhaps [8] - 1769:4, 1769:5, 1769:12, 1769:25, 1779:5, 1781:25, 1782:1, 1800:24</p> <p>Periera [4] - 1730:23, 1731:7, 1731:17, 1732:8</p> <p>period [4] - 1801:2, 1838:12, 1838:13, 1839:2</p> <p>perjury [5] - 1669:19, 1819:3, 1823:15, 1833:10</p> <p>permission [11] - 1664:20, 1665:7, 1687:13, 1786:11, 1786:12, 1786:14,</p>	<p>1793:3, 1793:12, 1793:14, 1793:16, 1795:8</p> <p>permits [1] - 1783:23</p> <p>permitted [6] - 1654:24, 1736:12, 1810:23, 1811:11, 1811:20, 1811:21</p> <p>Persaud [15] - 1664:9, 1683:6, 1683:10, 1683:16, 1684:3, 1687:11, 1690:15, 1690:16, 1697:6, 1699:18, 1699:19, 1699:23, 1703:2</p> <p>person [44] - 1653:19, 1653:25, 1661:6, 1661:12, 1661:16, 1674:10, 1682:10, 1692:22, 1693:1, 1699:1, 1699:3, 1714:7, 1714:24, 1715:12, 1715:13, 1717:2, 1741:19, 1750:15, 1754:15, 1758:13, 1761:7, 1762:5, 1776:20, 1794:16, 1795:3, 1812:13, 1818:23, 1823:1, 1823:4, 1825:18, 1830:22, 1830:23, 1832:19, 1834:12, 1835:14, 1837:1, 1844:11, 1845:16, 1858:11, 1862:16</p> <p>personal [4] - 1668:11, 1817:12, 1817:13</p> <p>personally [1] - 1651:5</p> <p>Persuad [1] - 1686:24</p> <p>persuade [11] - 1640:17, 1678:4, 1678:5, 1678:10, 1686:18, 1693:18, 1694:3, 1695:2, 1749:7, 1772:18, 1783:12</p> <p>persuaded [1] - 1640:19</p> <p>persuading [2] - 1711:16, 1771:5</p> <p>persuasion [1] - 1677:9</p> <p>pertinent [2] - 1801:9, 1814:21</p> <p>Pete [1] - 1763:6</p> <p>Peter [13] - 1718:12, 1786:1, 1786:2, 1786:3, 1786:12, 1786:13, 1786:14, 1787:14, 1787:16, 1787:23, 1823:12, 1841:22</p> <p>Peters [1] - 1848:21</p> <p>ph [7] - 1676:18, 1686:7, 1686:8, 1788:18, 1790:23, 1797:10, 1833:1</p> <p>phantom [1] - 1832:11</p> <p>Phantom [5] - 1646:6, 1651:12, 1652:15, 1686:22, 1695:1</p> <p>philosopher [1] - 1749:13</p> <p>phone [27] - 1647:16, 1647:17, 1647:22, 1647:23, 1684:4, 1684:18, 1685:2, 1685:4, 1685:7, 1685:8, 1693:6, 1697:12, 1710:4, 1718:9, 1718:19, 1720:14, 1750:9, 1750:10, 1751:3, 1767:11, 1790:9, 1791:11, 1791:12, 1791:17, 1794:2, 1794:5, 1836:17</p> <p>phoned [1] - 1832:20</p> <p>phones [13] - 1672:15, 1672:18, 1678:20, 1678:23, 1745:12, 1745:22, 1747:10, 1780:22, 1827:11, 1827:12, 1827:13</p> <p>photograph [3] - 1716:15, 1760:14, 1782:4</p> <p>photographs [1] - 1703:6</p>	<p>physical [2] - 1714:19, 1721:4</p> <p>physically [3] - 1801:11, 1808:14, 1808:15</p> <p>pick [4] - 1669:6, 1674:10, 1760:8, 1775:4</p> <p>picks [1] - 1689:21</p> <p>picture [7] - 1692:23, 1716:17, 1782:6, 1788:7, 1816:22, 1858:14, 1863:16</p> <p>pictures [4] - 1717:11, 1725:12, 1757:3, 1757:5</p> <p>piece [13] - 1716:22, 1719:17, 1719:25, 1762:17, 1762:21, 1769:22, 1770:7, 1789:20, 1789:21, 1806:7, 1809:2, 1844:1</p> <p>pieces [2] - 1763:5, 1763:9</p> <p>place [14] - 1684:11, 1705:4, 1716:4, 1730:18, 1792:15, 1794:3, 1796:16, 1796:17, 1808:20, 1829:20, 1838:1, 1850:3, 1854:5, 1868:22</p> <p>placed [1] - 1857:22</p> <p>places [2] - 1696:13, 1789:15</p> <p>plain [2] - 1781:8, 1833:15</p> <p>plainly [2] - 1781:6, 1852:7</p> <p>plan [18] - 1643:16, 1643:18, 1643:20, 1644:6, 1644:24, 1676:3, 1676:8, 1676:11, 1681:18, 1708:14, 1799:1, 1819:2, 1828:4, 1828:18, 1855:8, 1856:5, 1857:14</p> <p>planned [3] - 1775:3, 1775:4, 1863:25</p> <p>plans [1] - 1828:10</p> <p>play [17] - 1659:18, 1661:20, 1676:5, 1678:1, 1691:11, 1705:6, 1748:10, 1800:8, 1800:12, 1811:25, 1812:6, 1855:16, 1855:18, 1862:10, 1862:12</p> <p>played [15] - 1656:1, 1658:9, 1659:20, 1660:6, 1672:25, 1673:2, 1673:22, 1674:14, 1676:5, 1678:3, 1683:24, 1687:18, 1707:19, 1861:23, 1861:24</p> <p>played);(Tape [1] - 1676:15</p> <p>playing [1] - 1756:12</p> <p>plays [1] - 1705:9</p> <p>Plaza [1] - 1639:22</p> <p>plea [1] - 1855:17</p> <p>plead [1] - 1816:15</p> <p>plenty [1] - 1781:18</p> <p>plot [1] - 1788:23</p> <p>plummet [1] - 1830:16</p> <p>plus [1] - 1683:23</p> <p>pm [2] - 1752:10, 1755:1</p> <p>PNC [1] - 1662:17</p> <p>pocket [6] - 1724:9, 1724:11, 1724:13, 1839:24, 1854:7, 1867:10</p> <p>point [57] - 1640:8, 1650:6, 1655:23, 1669:16, 1671:12, 1672:1, 1672:24, 1684:18, 1684:22, 1688:5, 1688:8, 1689:11, 1690:19, 1690:22, 1704:18, 1709:2, 1732:6, 1732:15, 1737:3, 1738:14, 1738:15, 1738:24, 1739:8, 1739:12, 1739:14, 1754:8, 1754:10, 1755:1, 1758:4, 1759:8, 1770:11,</p>
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<p>1775:10, 1780:20, 1790:5, 1790:8, 1791:23, 1821:8, 1824:17, 1824:22, 1824:23, 1834:24, 1835:19, 1836:3, 1836:20, 1840:13, 1840:14, 1840:15, 1840:17, 1840:19, 1849:20, 1852:4, 1856:20, 1857:15</p> <p>point-man [1] - 1684:22</p> <p>pointed [7] - 1699:22, 1754:10, 1760:16, 1811:2, 1816:11, 1821:9, 1834:24</p> <p>points [3] - 1726:15, 1726:17, 1859:3</p> <p>poke [2] - 1699:5, 1699:13</p> <p>poked [1] - 1799:2</p> <p>police [6] - 1646:7, 1651:14, 1731:12, 1732:4, 1757:21, 1790:20</p> <p>politely [1] - 1696:12</p> <p>political [4] - 1729:5, 1801:7, 1840:25, 1841:20</p> <p>poor [1] - 1678:16</p> <p>pornographic [1] - 1707:5</p> <p>port [2] - 1760:7</p> <p>portion [7] - 1649:1, 1649:3, 1658:8, 1662:24, 1824:2, 1859:22</p> <p>portions [1] - 1656:13</p> <p>portray [1] - 1791:9</p> <p>pose [4] - 1699:15, 1702:23, 1704:8, 1865:9</p> <p>posed [1] - 1697:1</p> <p>poses [2] - 1667:14, 1682:19</p> <p>posing [1] - 1865:7</p> <p>position [10] - 1669:1, 1708:6, 1745:9, 1745:11, 1746:4, 1763:19, 1807:11, 1846:7, 1864:5</p> <p>positions [2] - 1708:1, 1863:5</p> <p>positive [1] - 1839:7</p> <p>possess [1] - 1720:22</p> <p>possessed [1] - 1805:22</p> <p>possessing [4] - 1716:4, 1718:4, 1773:2, 1773:4</p> <p>possession [4] - 1773:1, 1807:18, 1808:9, 1844:2</p> <p>possibility [2] - 1767:14, 1785:12</p> <p>possible [5] - 1670:4, 1677:5, 1765:9, 1841:4</p> <p>possibly [5] - 1732:19, 1735:7, 1767:16, 1865:2, 1865:3</p> <p>Post [2] - 1859:7, 1859:8</p> <p>Post-it [2] - 1859:7, 1859:8</p> <p>poster [1] - 1816:22</p> <p>potential [2] - 1777:21</p> <p>pounds [2] - 1715:7, 1760:8</p> <p>power [25] - 1717:20, 1759:11, 1759:14, 1759:16, 1759:20, 1760:3, 1760:6, 1760:12, 1760:22, 1761:1, 1761:3, 1761:6, 1761:11, 1761:15, 1762:9, 1774:21, 1774:22, 1774:23, 1774:24, 1803:5, 1805:17, 1806:5, 1806:6, 1861:18</p> <p>practice [3] - 1642:9, 1810:18, 1868:22</p>	<p>predominantly [1] - 1779:12</p> <p>premise [1] - 1770:3</p> <p>prep [1] - 1833:22</p> <p>preparation [4] - 1712:8, 1780:9, 1780:10, 1817:24</p> <p>prepare [3] - 1700:18, 1709:13, 1790:10</p> <p>prepared [2] - 1843:12, 1850:8</p> <p>preponderance [1] - 1846:12</p> <p>preposterous [1] - 1738:10</p> <p>prepped [2] - 1833:14, 1833:18</p> <p>prepping [1] - 1833:17</p> <p>presence [1] - 1701:24</p> <p>present [12] - 1641:1, 1651:19, 1651:20, 1689:3, 1691:14, 1741:6, 1771:22, 1771:23, 1777:19, 1785:10, 1800:14, 1833:4</p> <p>presented [4] - 1648:18, 1778:9, 1790:17, 1795:20</p> <p>presenting [3] - 1834:13, 1849:14, 1849:15</p> <p>presents [1] - 1778:10</p> <p>president [3] - 1853:11, 1853:15</p> <p>press [1] - 1689:11</p> <p>pressed [4] - 1785:2, 1833:20</p> <p>pressing [2] - 1808:5, 1856:4</p> <p>pressure [10] - 1677:5, 1677:22, 1689:11, 1693:23, 1712:17, 1712:18, 1795:14, 1823:25, 1826:19</p> <p>pretend [1] - 1811:9</p> <p>pretending [1] - 1811:9</p> <p>pretense [1] - 1842:3</p> <p>pretrial [2] - 1713:15, 1786:8</p> <p>pretty [6] - 1676:8, 1727:5, 1802:13, 1839:11, 1856:22, 1858:10</p> <p>price [2] - 1761:17, 1860:11</p> <p>priceless [2] - 1811:4, 1811:5</p> <p>primarily [7] - 1718:6, 1718:25, 1720:14, 1807:6, 1807:9, 1807:20, 1807:21</p> <p>primo [1] - 1825:19</p> <p>principle [4] - 1642:10, 1642:17, 1643:6, 1710:11</p> <p>printer [4] - 1709:15, 1842:18, 1842:20</p> <p>Prison [1] - 1830:19</p> <p>prison [20] - 1672:14, 1786:2, 1786:6, 1786:7, 1786:9, 1786:10, 1787:13, 1791:21, 1792:3, 1792:7, 1793:13, 1793:15, 1793:18, 1793:19, 1794:5, 1800:18, 1810:13, 1855:25</p> <p>prisoner [2] - 1765:1, 1786:1</p> <p>private [6] - 1713:13, 1786:5, 1793:18, 1793:24, 1796:21, 1851:2</p> <p>problem [21] - 1662:12, 1664:13, 1671:5, 1671:9, 1681:24, 1682:19, 1686:20, 1694:2, 1697:2, 1698:23, 1702:21, 1702:23, 1704:7, 1704:8, 1709:6, 1739:9, 1746:7, 1836:13, 1855:17, 1865:8, 1865:10</p> <p>problematic [1] - 1685:9</p>	<p>problems [3] - 1667:13, 1729:6, 1824:5</p> <p>procedure [1] - 1796:4</p> <p>procedures [2] - 1794:19</p> <p>proceeding [1] - 1848:11</p> <p>proceedings [3] - 1803:18, 1847:7, 1866:9</p> <p>Proceedings [1] - 1639:24</p> <p>process [1] - 1776:1</p> <p>produced [2] - 1639:25, 1853:9</p> <p>profanity [1] - 1812:17</p> <p>profile [1] - 1865:22</p> <p>profit [2] - 1793:20, 1837:2</p> <p>programs [2] - 1831:7, 1831:9</p> <p>promised [2] - 1710:24, 1854:3</p> <p>prompting [2] - 1815:22, 1815:25</p> <p>proof [14] - 1761:5, 1766:22, 1769:24, 1789:3, 1797:6, 1845:25, 1846:1, 1852:6, 1854:17, 1856:1, 1856:2, 1856:3, 1864:18, 1864:19</p> <p>proper [6] - 1777:8, 1777:9, 1784:8, 1789:2, 1792:14, 1805:10</p> <p>properly [2] - 1652:5, 1859:13</p> <p>property [2] - 1706:12, 1814:14</p> <p>proposed [2] - 1842:13, 1857:25</p> <p>proposition [11] - 1748:5, 1748:16, 1776:12, 1776:13, 1779:10, 1781:5, 1781:19, 1785:19, 1811:6, 1841:23, 1866:17</p> <p>prosecuted [2] - 1811:17, 1845:7</p> <p>prosecution [6] - 1650:14, 1668:1, 1778:12, 1784:7, 1803:15, 1831:18</p> <p>prosecutor [2] - 1782:19, 1859:2</p> <p>prosecutor's [1] - 1821:6</p> <p>prosecutors [12] - 1671:13, 1795:16, 1808:3, 1808:4, 1808:10, 1808:11, 1810:16, 1814:2, 1814:4, 1828:3, 1839:3, 1860:24</p> <p>prospective [2] - 1848:12, 1848:17</p> <p>prostitutes [1] - 1778:1</p> <p>protect [1] - 1781:9</p> <p>protected [1] - 1866:5</p> <p>prove [15] - 1718:5, 1722:5, 1746:9, 1756:24, 1770:5, 1771:19, 1772:15, 1773:17, 1829:7, 1848:15, 1851:14, 1864:15</p> <p>proved [2] - 1641:17, 1641:19</p> <p>proven [3] - 1772:9, 1773:7, 1869:6</p> <p>provide [1] - 1853:12</p> <p>provides [1] - 1644:7</p> <p>providing [2] - 1671:1, 1787:20</p> <p>province [1] - 1779:1</p> <p>proving [3] - 1641:24, 1846:6, 1863:5</p> <p>public [1] - 1804:4</p> <p>publicity [2] - 1869:15, 1869:16</p> <p>Puerto [1] - 1777:25</p> <p>pull [1] - 1648:9</p> <p>pulls [2] - 1645:14, 1649:18</p> <p>pundits [1] - 1865:20</p>
--	--	--

<p>punish [3] - 1781:6, 1781:7, 1781:8 punished [2] - 1823:19, 1868:7 punishment [1] - 1866:11 purchases [2] - 1801:6 purpose [6] - 1672:19, 1703:9, 1786:23, 1814:13, 1833:7 purposefully [2] - 1748:12, 1748:13 purposes [2] - 1746:11, 1816:24 pursuant [2] - 1786:24, 1828:8 pursue [1] - 1686:10 pursuit [1] - 1722:4 pushing [3] - 1801:16, 1855:22 put [69] - 1644:19, 1644:20, 1644:21, 1677:3, 1677:5, 1677:14, 1683:1, 1708:15, 1709:3, 1709:18, 1709:19, 1711:17, 1712:17, 1712:18, 1717:13, 1739:22, 1747:15, 1758:25, 1761:22, 1762:6, 1767:24, 1775:10, 1775:14, 1775:16, 1776:25, 1777:11, 1778:15, 1790:12, 1791:17, 1792:1, 1792:8, 1795:6, 1803:7, 1810:13, 1811:15, 1812:21, 1815:16, 1816:23, 1820:2, 1820:3, 1822:15, 1823:13, 1826:19, 1829:8, 1829:10, 1833:23, 1835:18, 1836:14, 1836:23, 1838:22, 1842:5, 1843:1, 1847:20, 1848:3, 1848:4, 1849:9, 1850:6, 1850:16, 1850:20, 1853:21, 1854:7, 1855:15, 1858:5, 1859:23, 1863:7, 1863:24, 1867:10, 1868:17 puts [4] - 1777:3, 1796:13, 1840:2, 1852:10 putting [17] - 1667:10, 1677:22, 1732:12, 1764:17, 1776:13, 1781:19, 1790:2, 1817:2, 1818:15, 1822:8, 1825:7, 1843:19, 1847:23, 1854:25, 1855:2, 1861:6</p>	<p>1743:6, 1746:6, 1785:7, 1787:3, 1795:2, 1804:3, 1804:13, 1815:15, 1815:19, 1815:20, 1815:22, 1816:6, 1817:2, 1818:16, 1821:6, 1842:1, 1847:20, 1847:21, 1849:21 quickly [3] - 1800:24, 1834:12 quit [1] - 1855:6 quite [5] - 1670:4, 1708:21, 1724:4, 1735:7, 1765:9 quote [2] - 1749:12, 1823:25</p>	<p>1781:13, 1781:14, 1782:25, 1806:1, 1809:3, 1809:8, 1809:9, 1809:12, 1817:2, 1818:2, 1818:19, 1833:4, 1833:25, 1843:4, 1847:6, 1854:5, 1854:20, 1864:21, 1864:22, 1864:23, 1865:2, 1865:3 reasonable [19] - 1641:25, 1722:6, 1746:9, 1748:19, 1756:24, 1766:23, 1769:24, 1770:5, 1771:19, 1772:10, 1773:7, 1774:18, 1780:24, 1829:7, 1846:7, 1863:6, 1864:16, 1869:6 reasonably [3] - 1756:22, 1763:21, 1766:21 reasons [6] - 1766:9, 1773:6, 1781:4, 1806:4, 1807:13, 1817:5 reboot [1] - 1659:5 rebooting [1] - 1824:4 rebuttal [8] - 1642:1, 1781:12, 1837:15, 1854:12, 1864:6, 1864:7, 1869:1, 1869:11 recalled [1] - 1795:21 receive [1] - 1858:11 received [2] - 1641:11, 1789:21 recently [1] - 1698:7 recess [4] - 1691:4, 1691:5, 1798:19, 1798:20 recessed [1] - 1740:7 recognize [3] - 1865:15, 1867:3 recognized [3] - 1686:20, 1714:2, 1845:4 recognizes [1] - 1845:8 recollection [3] - 1795:20, 1795:24, 1834:5 recommended [1] - 1823:2 record [18] - 1658:17, 1679:12, 1690:9, 1710:17, 1718:8, 1781:18, 1783:25, 1796:16, 1802:9, 1804:4, 1806:21, 1812:23, 1814:16, 1844:21, 1854:4, 1854:23, 1855:3, 1858:9 recorded [25] - 1639:24, 1679:6, 1707:20, 1707:24, 1719:21, 1767:12, 1776:16, 1778:3, 1778:5, 1778:19, 1778:22, 1780:14, 1780:15, 1782:13, 1801:10, 1802:1, 1806:3, 1808:18, 1813:18, 1821:14, 1821:17, 1834:23, 1835:2, 1851:15, 1862:9 recorder [11] - 1689:21, 1706:10, 1780:16, 1780:17, 1810:6, 1810:8, 1858:5, 1858:14, 1858:15, 1865:5 recording [10] - 1658:8, 1659:18, 1660:5, 1673:20, 1682:18, 1706:25, 1737:18, 1802:10, 1806:10, 1858:11 recordings [18] - 1648:1, 1681:23, 1683:16, 1683:18, 1686:25, 1689:23, 1691:12, 1722:18, 1801:12, 1803:13, 1804:5, 1804:8, 1804:11, 1809:5, 1809:6, 1810:20, 1810:22, 1818:19 records [8] - 1679:10, 1716:10, 1718:22, 1789:9, 1796:8, 1850:4, 1850:5</p>
Q		
<p>qualifications [3] - 1777:1, 1788:25, 1814:18 qualified [1] - 1736:5 quarrel [1] - 1779:10 quarreling [2] - 1811:6, 1814:17 quarter [2] - 1799:19, 1800:10 Queens [9] - 1713:13, 1713:18, 1713:21, 1714:23, 1715:1, 1791:21, 1792:12, 1792:20, 1829:17 QUESTION [3] - 1658:23, 1767:5, 1768:9 questioning [1] - 1666:9 questions [46] - 1648:3, 1650:4, 1650:22, 1655:13, 1655:14, 1655:17, 1655:19, 1655:20, 1655:21, 1656:3, 1656:6, 1656:24, 1658:9, 1658:15, 1660:14, 1660:18, 1662:22, 1663:9, 1663:15, 1663:23, 1663:25, 1671:4, 1671:9, 1673:12, 1688:1, 1731:20,</p>	<p>R</p> <p>R-10 [2] - 1659:18, 1674:12 R-13 [1] - 1676:13 R-18 [2] - 1705:6, 1705:7 racing [2] - 1837:7, 1838:7 radio [1] - 1805:1 raise [4] - 1812:12, 1825:5, 1854:15, 1869:17 raised [4] - 1824:22, 1825:9, 1825:24, 1854:14 raising [3] - 1671:4, 1804:2, 1846:2 Raji [2] - 1693:2, 1693:8 ramifications [2] - 1680:6, 1747:21 ranking [2] - 1662:16, 1662:18 rat [2] - 1699:17, 1699:19 rather [2] - 1644:17, 1645:3 reach [2] - 1644:24, 1671:7 reaction [2] - 1835:17, 1861:3 reactions [1] - 1838:17 read [11] - 1662:3, 1663:18, 1709:11, 1725:13, 1761:25, 1767:8, 1817:16, 1834:7, 1859:16, 1861:20, 1869:16 reading [3] - 1748:23, 1834:7, 1845:15 reads [1] - 1723:21 ready [9] - 1640:6, 1642:4, 1695:5, 1712:20, 1827:13, 1829:18, 1836:21 Reagan [5] - 1717:14, 1717:17, 1719:8, 1719:16, 1719:24 reaganmrk [1] - 1716:24 real [8] - 1646:17, 1646:18, 1706:9, 1706:13, 1782:1, 1798:3, 1830:22, 1830:23 realize [1] - 1772:9 really [40] - 1647:4, 1652:20, 1669:9, 1669:24, 1670:20, 1679:8, 1682:8, 1685:11, 1686:10, 1689:6, 1695:18, 1711:6, 1715:15, 1724:18, 1727:7, 1732:14, 1732:16, 1734:3, 1734:6, 1735:9, 1735:20, 1759:9, 1763:16, 1777:2, 1797:14, 1797:17, 1797:20, 1809:10, 1812:9, 1813:2, 1817:11, 1828:5, 1828:23, 1840:8, 1840:14, 1848:1, 1852:12, 1857:15, 1861:21 reason [38] - 1652:3, 1669:4, 1674:24, 1702:14, 1718:10, 1719:5, 1725:5, 1730:20, 1737:6, 1737:20, 1741:17, 1743:11, 1755:13, 1756:16, 1763:8,</p>	<p>1781:13, 1781:14, 1782:25, 1806:1, 1809:3, 1809:8, 1809:9, 1809:12, 1817:2, 1818:2, 1818:19, 1833:4, 1833:25, 1843:4, 1847:6, 1854:5, 1854:20, 1864:21, 1864:22, 1864:23, 1865:2, 1865:3 reasonable [19] - 1641:25, 1722:6, 1746:9, 1748:19, 1756:24, 1766:23, 1769:24, 1770:5, 1771:19, 1772:10, 1773:7, 1774:18, 1780:24, 1829:7, 1846:7, 1863:6, 1864:16, 1869:6 reasonably [3] - 1756:22, 1763:21, 1766:21 reasons [6] - 1766:9, 1773:6, 1781:4, 1806:4, 1807:13, 1817:5 reboot [1] - 1659:5 rebooting [1] - 1824:4 rebuttal [8] - 1642:1, 1781:12, 1837:15, 1854:12, 1864:6, 1864:7, 1869:1, 1869:11 recalled [1] - 1795:21 receive [1] - 1858:11 received [2] - 1641:11, 1789:21 recently [1] - 1698:7 recess [4] - 1691:4, 1691:5, 1798:19, 1798:20 recessed [1] - 1740:7 recognize [3] - 1865:15, 1867:3 recognized [3] - 1686:20, 1714:2, 1845:4 recognizes [1] - 1845:8 recollection [3] - 1795:20, 1795:24, 1834:5 recommended [1] - 1823:2 record [18] - 1658:17, 1679:12, 1690:9, 1710:17, 1718:8, 1781:18, 1783:25, 1796:16, 1802:9, 1804:4, 1806:21, 1812:23, 1814:16, 1844:21, 1854:4, 1854:23, 1855:3, 1858:9 recorded [25] - 1639:24, 1679:6, 1707:20, 1707:24, 1719:21, 1767:12, 1776:16, 1778:3, 1778:5, 1778:19, 1778:22, 1780:14, 1780:15, 1782:13, 1801:10, 1802:1, 1806:3, 1808:18, 1813:18, 1821:14, 1821:17, 1834:23, 1835:2, 1851:15, 1862:9 recorder [11] - 1689:21, 1706:10, 1780:16, 1780:17, 1810:6, 1810:8, 1858:5, 1858:14, 1858:15, 1865:5 recording [10] - 1658:8, 1659:18, 1660:5, 1673:20, 1682:18, 1706:25, 1737:18, 1802:10, 1806:10, 1858:11 recordings [18] - 1648:1, 1681:23, 1683:16, 1683:18, 1686:25, 1689:23, 1691:12, 1722:18, 1801:12, 1803:13, 1804:5, 1804:8, 1804:11, 1809:5, 1809:6, 1810:20, 1810:22, 1818:19 records [8] - 1679:10, 1716:10, 1718:22, 1789:9, 1796:8, 1850:4, 1850:5</p>

<p>recovered [2] - 1685:16, 1691:23</p> <p>recross [1] - 1828:22</p> <p>recruited [2] - 1662:14, 1724:20</p> <p>redacted [2] - 1786:19, 1786:22</p> <p>redirect [3] - 1657:4, 1663:9, 1704:25</p> <p>redirected [1] - 1705:5</p> <p>refer [3] - 1662:2, 1669:23, 1669:24</p> <p>reference [3] - 1832:9, 1844:19, 1869:1</p> <p>referenced [1] - 1708:9</p> <p>referred [5] - 1687:3, 1787:5, 1787:6, 1795:1, 1820:4</p> <p>referring [4] - 1646:17, 1659:10, 1663:15, 1670:16</p> <p>reflected [2] - 1753:12, 1809:19</p> <p>reflecting [1] - 1641:23</p> <p>reflective [2] - 1744:25, 1766:12</p> <p>refresh [1] - 1834:5</p> <p>refuse [3] - 1672:21, 1811:15, 1811:16</p> <p>refused [2] - 1857:11</p> <p>refuted [1] - 1781:21</p> <p>Regan [14] - 1646:23, 1647:18, 1689:13, 1692:1, 1692:9, 1693:11, 1754:15, 1754:16, 1754:19, 1757:20, 1757:22, 1759:15</p> <p>regard [9] - 1640:8, 1681:23, 1682:19, 1711:3, 1730:22, 1762:13, 1765:16, 1845:24, 1869:18</p> <p>regarding [5] - 1744:18, 1758:9, 1760:12, 1765:8, 1766:12</p> <p>regards [2] - 1640:15, 1704:23</p> <p>regular [1] - 1757:24</p> <p>regulation [1] - 1794:10</p> <p>reject [1] - 1842:19</p> <p>related [2] - 1733:6, 1854:10</p> <p>relating [2] - 1654:2, 1698:13</p> <p>relation [5] - 1681:7, 1694:19, 1699:2, 1751:8, 1751:15</p> <p>relationship [2] - 1683:6, 1816:9</p> <p>relationships [1] - 1733:16</p> <p>relative [4] - 1733:7, 1733:8, 1733:12, 1826:7</p> <p>relatives [2] - 1674:16, 1674:22</p> <p>relax [1] - 1852:24</p> <p>relayed [2] - 1752:25, 1753:11</p> <p>released [1] - 1688:1</p> <p>reliable [1] - 1821:16</p> <p>rely [2] - 1771:13, 1795:16</p> <p>relying [1] - 1823:6</p> <p>remarks [2] - 1756:6, 1777:12</p> <p>remember [95] - 1645:4, 1646:23, 1648:1, 1648:17, 1650:5, 1672:15, 1673:12, 1679:5, 1683:16, 1687:11, 1689:1, 1702:24, 1710:2, 1712:21, 1712:22, 1714:1, 1714:25, 1715:22, 1717:17, 1717:19, 1722:20, 1724:25, 1726:4, 1726:6, 1726:8, 1727:2, 1727:15, 1729:21, 1730:25, 1732:15, 1732:18, 1733:13, 1733:19, 1735:14, 1737:18, 1739:2, 1739:4, 1742:2,</p>	<p>1742:13, 1742:19, 1744:19, 1745:1, 1746:8, 1748:20, 1751:15, 1752:19, 1753:4, 1754:10, 1754:17, 1756:12, 1757:6, 1758:19, 1759:17, 1760:14, 1760:16, 1761:6, 1761:11, 1763:18, 1763:19, 1764:18, 1765:4, 1765:21, 1766:1, 1766:3, 1766:5, 1766:17, 1766:25, 1767:23, 1769:16, 1769:23, 1770:19, 1771:9, 1773:21, 1785:4, 1785:5, 1793:9, 1795:14, 1795:25, 1796:10, 1796:11, 1796:18, 1812:6, 1812:14, 1813:3, 1818:5, 1820:19, 1821:25, 1826:14, 1826:21, 1833:12, 1838:21, 1851:8, 1853:10, 1858:1</p> <p>remembers [2] - 1709:21, 1794:16</p> <p>remind [4] - 1709:25, 1784:13, 1792:14, 1833:10</p> <p>reminds [2] - 1749:12, 1775:18</p> <p>render [4] - 1807:5, 1807:9, 1807:21</p> <p>rendered [1] - 1718:6</p> <p>renditions [1] - 1850:1</p> <p>rent [1] - 1759:10</p> <p>repeat [3] - 1806:5, 1812:20, 1835:7</p> <p>repeatedly [1] - 1847:22</p> <p>replacing [1] - 1794:17</p> <p>replete [1] - 1815:24</p> <p>report [7] - 1795:25, 1796:1, 1796:2, 1832:25, 1859:16, 1860:6</p> <p>reported [2] - 1645:12, 1681:3</p> <p>Reporter [1] - 1639:22</p> <p>reports [1] - 1796:7</p> <p>represent [8] - 1714:7, 1714:10, 1714:24, 1715:1, 1789:24, 1790:7, 1790:25, 1791:19</p> <p>representation [5] - 1787:21, 1788:11, 1789:2, 1818:18, 1823:18</p> <p>representative [1] - 1788:21</p> <p>represented [4] - 1665:14, 1713:19, 1714:9, 1715:12</p> <p>representing [9] - 1769:21, 1803:25, 1810:11, 1810:12, 1845:5, 1851:18, 1868:16, 1868:18, 1868:20</p> <p>represents [1] - 1668:25</p> <p>request [1] - 1782:16</p> <p>requested [2] - 1701:19, 1702:4</p> <p>requests [1] - 1804:10</p> <p>require [1] - 1800:10</p> <p>required [8] - 1786:10, 1786:11, 1787:15, 1787:22, 1827:18, 1829:4, 1829:7, 1868:2</p> <p>requires [3] - 1780:6, 1780:7, 1796:1</p> <p>rescheduled [2] - 1864:1</p> <p>resolution [2] - 1841:4, 1841:17</p> <p>resolve [5] - 1668:14, 1674:20, 1706:6, 1863:11</p> <p>resounds [1] - 1834:25</p> <p>resources [1] - 1849:11</p> <p>respect [9] - 1665:22, 1776:5, 1800:21, 1804:23, 1827:22, 1827:23, 1837:10, 1869:3</p>	<p>respectfully [10] - 1656:4, 1666:12, 1685:17, 1685:19, 1716:17, 1795:13, 1806:12, 1825:4, 1835:19, 1859:8</p> <p>respond [4] - 1656:1, 1700:20, 1700:21, 1824:15</p> <p>responds [1] - 1700:21</p> <p>response [7] - 1659:25, 1665:23, 1687:25, 1787:3, 1812:18, 1821:6, 1860:16</p> <p>responsibility [2] - 1774:6, 1786:17</p> <p>responsible [12] - 1645:22, 1646:11, 1646:25, 1651:5, 1744:3, 1744:6, 1762:7, 1762:20, 1762:24, 1768:25, 1769:6, 1773:4</p> <p>responsibly [1] - 1784:24</p> <p>responsive [3] - 1660:24, 1661:12, 1760:25</p> <p>rest [10] - 1652:14, 1652:15, 1659:3, 1768:9, 1810:14, 1821:7, 1835:14, 1848:3, 1848:5</p> <p>restarting [1] - 1759:12</p> <p>results [1] - 1679:25</p> <p>resume [2] - 1740:1, 1869:11</p> <p>retained [5] - 1801:2, 1801:15, 1810:2, 1810:3, 1865:24</p> <p>retainer [2] - 1789:12, 1840:20</p> <p>return [3] - 1710:25, 1721:5, 1837:3</p> <p>revealed [3] - 1785:3, 1829:22, 1829:23</p> <p>revealing [1] - 1835:4</p> <p>reverse [1] - 1761:19</p> <p>review [2] - 1800:23, 1800:25</p> <p>Ricardo [7] - 1645:19, 1646:1, 1648:4, 1730:22, 1737:5, 1737:7</p> <p>Ricco [15] - 1736:3, 1776:24, 1777:11, 1778:7, 1814:15, 1814:17, 1816:11, 1823:16, 1830:13, 1830:17, 1830:25, 1854:2, 1855:25, 1868:10, 1868:13</p> <p>Ricco's [2] - 1777:16, 1830:21</p> <p>Richard [1] - 1787:9</p> <p>Rick [1] - 1720:3</p> <p>RICO [1] - 1664:21</p> <p>Rico [1] - 1777:25</p> <p>rid [1] - 1683:4</p> <p>riddled [2] - 1645:14, 1649:18</p> <p>ridiculous [5] - 1773:24, 1797:7, 1800:19, 1850:25, 1854:20</p> <p>rights [1] - 1866:4</p> <p>rings [1] - 1831:23</p> <p>ripped [1] - 1667:20</p> <p>rise [5] - 1691:1, 1740:1, 1798:14, 1798:24, 1869:19</p> <p>risk [1] - 1856:24</p> <p>risking [1] - 1789:15</p> <p>RK [5] - 1710:16, 1719:18, 1747:17, 1759:8, 1759:10</p> <p>RMS [4] - 1747:19, 1749:22, 1752:24, 1784:3</p> <p>RMS's [1] - 1747:20</p> <p>road [1] - 1816:14</p>
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<p>ROBERT [1] - 1639:5 Robert [94] - 1639:18, 1642:13, 1643:22, 1646:14, 1647:2, 1649:2, 1649:4, 1649:13, 1649:16, 1650:15, 1650:21, 1651:13, 1654:18, 1656:5, 1662:1, 1662:6, 1664:15, 1664:18, 1666:12, 1666:22, 1667:9, 1671:21, 1679:14, 1679:22, 1680:4, 1680:10, 1681:1, 1681:3, 1681:6, 1682:1, 1687:5, 1687:7, 1691:23, 1698:15, 1700:6, 1701:21, 1704:16, 1711:19, 1711:20, 1711:21, 1713:11, 1713:19, 1713:20, 1713:23, 1713:25, 1714:5, 1714:8, 1714:18, 1716:10, 1716:11, 1717:7, 1717:18, 1717:25, 1722:4, 1726:11, 1726:19, 1726:24, 1726:25, 1727:7, 1728:12, 1730:18, 1732:21, 1732:25, 1734:24, 1735:2, 1737:2, 1737:4, 1737:18, 1738:5, 1742:14, 1742:18, 1742:25, 1743:13, 1745:10, 1745:18, 1748:2, 1748:11, 1751:3, 1751:23, 1753:15, 1755:4, 1759:15, 1764:7, 1767:25, 1774:5, 1784:3, 1785:21, 1786:25, 1790:2, 1790:6, 1791:25, 1792:2, 1811:11, 1856:12 Roberts [9] - 1646:3, 1646:10, 1651:2, 1651:4, 1653:2, 1653:12, 1711:22 Rock [1] - 1792:11 rocket [1] - 1655:5 Rodney [23] - 1781:25, 1782:13, 1782:14, 1782:15, 1782:16, 1782:18, 1782:20, 1782:24, 1783:2, 1783:9, 1783:16, 1783:19, 1783:24, 1784:11, 1784:12, 1784:13, 1784:17, 1785:14, 1787:18, 1823:12, 1841:22 Rodrigues [23] - 1645:19, 1646:1, 1646:10, 1646:20, 1647:17, 1648:4, 1650:25, 1651:4, 1651:12, 1652:24, 1653:12, 1654:3, 1690:10, 1690:11, 1690:16, 1697:25, 1698:14, 1698:16, 1711:22, 1712:13, 1775:12, 1775:23 Rodrigues's [1] - 1646:2 Rodriguez [14] - 1679:3, 1685:18, 1701:13, 1730:23, 1731:7, 1731:16, 1790:15, 1793:22, 1794:20, 1847:17, 1848:1, 1848:17, 1848:21 Rodriguez' [1] - 1736:10 Roger [178] - 1643:3, 1645:3, 1645:4, 1646:24, 1649:21, 1649:24, 1650:5, 1650:9, 1650:11, 1650:13, 1650:14, 1650:17, 1651:9, 1652:25, 1653:5, 1653:20, 1653:21, 1653:23, 1653:24, 1654:5, 1658:19, 1662:5, 1662:14, 1662:16, 1662:19, 1667:16, 1667:19, 1667:21, 1667:23, 1668:2, 1668:3, 1668:5, 1669:10, 1669:14, 1669:25, 1670:6, 1670:12, 1670:22, 1670:25, 1671:20, 1671:22, 1674:18, 1678:14, 1678:24, 1679:4, 1679:7, 1679:12, 1679:19, 1679:21, 1679:23, 1681:2,</p>	<p>1681:9, 1681:10, 1681:18, 1683:10, 1683:12, 1683:13, 1684:12, 1684:13, 1684:17, 1684:20, 1685:6, 1685:7, 1685:20, 1687:1, 1687:10, 1692:12, 1692:19, 1692:24, 1693:2, 1693:8, 1693:9, 1695:23, 1696:5, 1696:19, 1696:20, 1697:5, 1697:24, 1698:16, 1699:9, 1699:22, 1700:24, 1701:23, 1707:9, 1708:9, 1708:11, 1710:14, 1711:21, 1712:1, 1712:10, 1717:4, 1717:12, 1719:10, 1719:11, 1719:15, 1719:24, 1720:3, 1720:4, 1724:20, 1725:18, 1727:17, 1727:21, 1728:15, 1729:6, 1730:3, 1730:15, 1731:22, 1732:2, 1732:7, 1732:18, 1733:20, 1734:18, 1735:2, 1735:13, 1739:10, 1739:16, 1744:13, 1745:18, 1745:19, 1746:5, 1748:24, 1751:9, 1752:13, 1752:17, 1752:20, 1752:22, 1752:23, 1753:8, 1753:15, 1753:16, 1758:16, 1761:25, 1766:11, 1766:15, 1766:16, 1770:16, 1770:22, 1776:22, 1785:1, 1786:16, 1787:4, 1787:10, 1787:12, 1787:21, 1801:1, 1801:15, 1810:2, 1811:10, 1813:17, 1816:3, 1816:7, 1816:10, 1816:19, 1817:1, 1818:6, 1822:13, 1822:19, 1822:23, 1823:6, 1832:21, 1841:12, 1841:13, 1844:23, 1847:10, 1847:14, 1847:15, 1858:8, 1865:9, 1865:18, 1868:16, 1868:18, 1868:20 Roger's [17] - 1668:5, 1684:10, 1684:11, 1684:12, 1684:21, 1685:4, 1685:6, 1685:8, 1687:2, 1693:6, 1695:1, 1739:18, 1771:4, 1784:7, 1816:5, 1836:8, 1857:2 Rogers [1] - 1825:12 rogue [1] - 1851:15 role [7] - 1727:11, 1742:1, 1742:2, 1743:11, 1765:23, 1765:24, 1813:9 Rolex [2] - 1859:7, 1859:8 Ronald [4] - 1645:7, 1645:15, 1646:12, 1833:1 room [13] - 1710:21, 1721:1, 1825:3, 1828:4, 1828:11, 1829:10, 1834:15, 1848:14, 1849:24, 1857:24, 1863:22, 1864:14 Row [1] - 1793:24 Rudolph [1] - 1639:22 rule [6] - 1736:6, 1736:7, 1805:15, 1848:5, 1866:25, 1867:1 Rule [5] - 1662:7, 1821:25, 1822:24, 1823:4, 1831:13 rules [10] - 1641:25, 1642:20, 1666:20, 1671:23, 1715:23, 1720:25, 1779:2, 1779:6, 1805:9, 1866:9 ruling [1] - 1786:21 rumors [1] - 1700:15 run [5] - 1664:24, 1701:4, 1717:3, 1718:2, 1823:10</p>	<p>running [3] - 1717:2, 1758:14, 1830:8 runs [1] - 1729:17 ruse [2] - 1857:16, 1863:3 Ryan [22] - 1667:2, 1697:1, 1697:15, 1697:25, 1699:2, 1699:15, 1699:16, 1700:13, 1700:14, 1701:4, 1701:7, 1701:11, 1701:17, 1701:22, 1702:18, 1712:20, 1719:13, 1772:7, 1826:10, 1844:17 Ryan's [1] - 1698:23</p> <p style="text-align: center;">S</p> <p>S-303 [1] - 1786:19 S-visa [1] - 1811:3 sacrifice [1] - 1867:10 safe [3] - 1732:6, 1857:5, 1869:19 safely [2] - 1833:5, 1833:9 safety [2] - 1789:15, 1867:11 Saigo [2] - 1860:5, 1860:6 Saint [2] - 1813:2, 1813:4 saint [1] - 1813:4 sales [1] - 1837:3 Sancho [1] - 1667:2 sanctions [1] - 1845:6 Sapone [11] - 1714:22, 1715:6, 1715:11, 1715:13, 1715:16, 1715:21, 1797:9, 1797:18, 1797:20, 1834:19 sat [3] - 1788:9, 1811:14, 1821:11 save [2] - 1799:25, 1800:9 saw [28] - 1681:7, 1681:8, 1701:9, 1714:18, 1719:25, 1722:20, 1723:8, 1751:8, 1751:15, 1784:23, 1785:13, 1789:8, 1796:16, 1803:16, 1803:21, 1804:15, 1804:17, 1805:8, 1810:20, 1815:10, 1826:10, 1827:24, 1839:9, 1853:6, 1858:14, 1863:16 scale [1] - 1846:14 scales [1] - 1846:13 scanned [2] - 1685:16, 1836:12 scare [1] - 1708:24 scared [6] - 1698:8, 1735:11, 1757:24, 1757:25, 1758:2, 1758:7 scatters [1] - 1851:22 scene [1] - 1653:11 scenes [1] - 1857:6 scent [1] - 1810:9 scheduled [1] - 1860:4 scheme [1] - 1788:22 school [1] - 1773:22 science [1] - 1655:5 screen [18] - 1647:10, 1647:13, 1648:25, 1662:23, 1663:11, 1705:8, 1708:16, 1728:6, 1786:18, 1787:20, 1790:12, 1792:1, 1812:21, 1836:23, 1847:20, 1853:10, 1858:6, 1859:24 screwing [2] - 1677:15, 1683:1 script [3] - 1670:12, 1670:14, 1820:25 scripted [1] - 1818:20</p>
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<p>scrutinize [1] - 1724:18</p> <p>Sean [23] - 1646:4, 1646:11, 1646:15, 1646:18, 1647:23, 1651:1, 1651:4, 1651:13, 1652:14, 1653:1, 1653:12, 1689:13, 1731:11, 1731:17, 1732:8, 1757:23, 1790:15, 1847:17, 1848:1, 1848:18</p> <p>search [6] - 1671:16, 1671:17, 1760:17, 1760:25, 1806:6, 1857:23</p> <p>seasoning [1] - 1669:22</p> <p>seat [3] - 1640:4, 1641:4, 1798:22</p> <p>seated [5] - 1691:15, 1741:3, 1741:7, 1798:23, 1800:15</p> <p>seating [1] - 1691:9</p> <p>second [21] - 1696:17, 1697:14, 1707:20, 1715:9, 1718:10, 1737:23, 1738:9, 1739:7, 1741:17, 1757:18, 1759:7, 1759:8, 1769:11, 1770:21, 1771:15, 1772:3, 1794:9, 1818:19, 1839:22, 1857:25, 1862:6</p> <p>secondary [1] - 1642:24</p> <p>secondly [1] - 1670:20</p> <p>seconds [16] - 1659:19, 1672:24, 1673:20, 1674:12, 1676:14, 1678:1, 1687:14, 1687:17, 1705:6, 1705:7, 1774:20, 1797:16, 1797:17, 1838:5, 1851:4, 1860:15</p> <p>secret [1] - 1851:17</p> <p>secretary [4] - 1742:24, 1757:6, 1757:13, 1824:10</p> <p>secretly [1] - 1719:3</p> <p>secrets [3] - 1803:16, 1804:1, 1820:7</p> <p>Section [1] - 1690:10</p> <p>section [6] - 1690:14, 1733:17, 1733:24, 1733:25, 1754:10, 1866:7</p> <p>security [9] - 1717:2, 1717:3, 1718:1, 1718:2, 1720:18, 1720:19, 1758:15, 1802:17</p> <p>seduce [1] - 1707:5</p> <p>see [92] - 1641:5, 1651:14, 1652:11, 1652:13, 1653:14, 1659:3, 1660:20, 1664:16, 1665:1, 1665:4, 1665:9, 1665:10, 1665:11, 1665:12, 1665:13, 1668:12, 1679:25, 1686:5, 1686:6, 1689:24, 1700:13, 1700:14, 1708:7, 1709:9, 1709:11, 1710:8, 1710:16, 1713:21, 1713:25, 1714:5, 1714:24, 1716:19, 1717:11, 1729:24, 1731:11, 1733:15, 1734:4, 1738:8, 1738:15, 1740:6, 1742:8, 1743:4, 1745:18, 1746:22, 1747:3, 1747:13, 1748:16, 1752:10, 1764:8, 1764:16, 1764:23, 1764:24, 1766:3, 1767:2, 1768:2, 1768:22, 1769:15, 1770:17, 1770:24, 1776:17, 1783:19, 1787:16, 1787:18, 1788:4, 1789:8, 1789:22, 1797:1, 1802:24, 1803:6, 1804:6, 1805:5, 1806:5, 1808:11, 1813:7, 1816:11, 1817:6, 1817:14, 1825:8, 1825:11, 1825:12, 1825:21, 1830:5, 1836:2,</p>	<p>1836:18, 1843:20, 1847:3, 1848:17, 1858:7, 1860:5, 1866:16</p> <p>seeing [10] - 1715:10, 1748:3, 1752:9, 1752:13, 1766:3, 1786:4, 1817:23, 1825:11, 1825:18, 1825:24</p> <p>seeking [2] - 1823:8</p> <p>seem [3] - 1652:9, 1652:10, 1724:9</p> <p>sees [5] - 1741:22, 1752:8, 1791:9, 1824:3, 1831:25</p> <p>seized [1] - 1733:13</p> <p>select [1] - 1836:16</p> <p>sell [4] - 1645:24, 1686:13, 1686:14, 1720:10</p> <p>selling [5] - 1702:11, 1730:15, 1785:9, 1801:20, 1830:15</p> <p>sells [2] - 1718:16, 1718:17</p> <p>Selwyn [152] - 1640:15, 1640:19, 1645:3, 1645:9, 1645:18, 1648:2, 1649:2, 1649:4, 1649:15, 1649:17, 1650:6, 1650:8, 1650:9, 1650:12, 1650:15, 1650:18, 1650:20, 1651:7, 1655:23, 1658:10, 1658:11, 1658:18, 1659:24, 1660:8, 1661:25, 1662:3, 1662:4, 1662:8, 1662:13, 1662:17, 1662:19, 1663:1, 1663:5, 1663:17, 1664:15, 1665:2, 1665:3, 1665:5, 1666:25, 1667:4, 1667:12, 1668:1, 1668:22, 1669:21, 1672:3, 1676:20, 1676:23, 1679:14, 1680:9, 1680:11, 1681:5, 1682:14, 1682:15, 1685:13, 1689:22, 1691:21, 1696:16, 1700:5, 1704:17, 1704:18, 1706:15, 1706:19, 1707:1, 1707:23, 1711:17, 1712:9, 1712:15, 1712:17, 1713:4, 1723:6, 1723:22, 1723:25, 1725:24, 1726:9, 1727:3, 1727:16, 1729:19, 1729:22, 1730:6, 1730:16, 1730:20, 1731:16, 1732:15, 1732:20, 1732:23, 1733:2, 1733:15, 1733:23, 1734:7, 1735:17, 1735:19, 1737:9, 1737:21, 1741:19, 1742:5, 1742:13, 1742:18, 1743:7, 1743:19, 1745:10, 1745:20, 1750:10, 1750:13, 1755:7, 1781:14, 1782:15, 1782:17, 1785:5, 1785:10, 1809:24, 1810:5, 1810:24, 1811:2, 1814:1, 1815:16, 1817:4, 1818:20, 1819:3, 1819:4, 1821:1, 1821:10, 1821:18, 1824:11, 1824:12, 1825:21, 1827:24, 1829:12, 1831:11, 1831:20, 1832:6, 1832:10, 1832:15, 1833:10, 1834:10, 1834:23, 1835:2, 1835:13, 1835:17, 1836:8, 1836:22, 1836:24, 1839:5, 1840:18, 1841:25, 1843:16, 1845:1, 1854:21, 1855:10, 1855:18, 1856:17, 1863:17</p> <p>send [23] - 1664:25, 1665:11, 1682:23, 1687:1, 1687:2, 1687:11, 1689:12, 1689:23, 1690:13, 1690:15, 1690:16, 1692:2, 1703:4, 1704:12, 1708:6, 1717:11, 1750:1, 1761:8, 1769:1,</p>	<p>1769:2, 1809:4, 1869:4, 1869:8</p> <p>sending [12] - 1643:10, 1651:24, 1712:12, 1712:14, 1764:25, 1767:20, 1767:24, 1826:9, 1830:2, 1849:2</p> <p>sends [3] - 1646:9, 1690:9, 1751:23</p> <p>sense [21] - 1655:7, 1655:9, 1668:10, 1719:2, 1732:11, 1734:5, 1746:23, 1747:24, 1749:20, 1769:16, 1769:17, 1774:3, 1774:8, 1774:9, 1774:15, 1776:2, 1801:20, 1813:23, 1844:5, 1852:17, 1852:18</p> <p>sent [25] - 1643:24, 1681:7, 1681:8, 1684:6, 1735:16, 1751:6, 1751:8, 1751:9, 1751:17, 1752:10, 1764:2, 1766:24, 1786:4, 1787:16, 1804:3, 1804:19, 1807:4, 1810:7, 1826:12, 1836:12, 1851:25, 1854:17, 1868:2, 1869:2</p> <p>sentence [5] - 1659:4, 1729:15, 1776:7, 1787:13, 1848:20</p> <p>sentenced [1] - 1786:9</p> <p>sentences [1] - 1834:6</p> <p>separate [5] - 1753:15, 1764:10, 1771:8, 1771:9, 1771:12</p> <p>separately [1] - 1771:12</p> <p>September [14] - 1679:7, 1710:15, 1710:22, 1784:21, 1789:12, 1808:20, 1825:17, 1838:13, 1838:25, 1839:1, 1839:2, 1852:20, 1855:21, 1857:19</p> <p>sequence [1] - 1860:15</p> <p>sequestered [1] - 1753:7</p> <p>sequitur [1] - 1824:7</p> <p>serial [2] - 1760:7</p> <p>serious [6] - 1713:12, 1716:6, 1716:7, 1812:3, 1829:11, 1866:11</p> <p>serve [1] - 1786:9</p> <p>server [5] - 1775:18, 1775:24, 1775:25, 1776:2, 1843:5</p> <p>Service [1] - 1713:15</p> <p>Sessler [10] - 1765:3, 1765:4, 1767:1, 1767:4, 1788:18, 1793:8, 1793:11, 1831:25, 1832:3</p> <p>set [7] - 1698:9, 1708:18, 1719:13, 1727:4, 1759:11, 1772:17, 1864:12</p> <p>sets [1] - 1676:8</p> <p>setting [1] - 1821:13</p> <p>seven [4] - 1672:6, 1695:8, 1815:17, 1854:8</p> <p>several [4] - 1687:10, 1781:24, 1804:17, 1833:22</p> <p>shady [1] - 1824:23</p> <p>Shaeed [1] - 1785:1</p> <p>Shaheed [2] - 1701:23, 1848:8</p> <p>Sham [1] - 1719:16</p> <p>shape [1] - 1772:16</p> <p>Shargel [15] - 1641:22, 1642:3, 1655:13, 1655:17, 1656:16, 1663:9, 1663:11, 1714:23, 1721:10, 1767:4, 1768:8, 1769:10, 1868:23, 1868:24, 1869:4</p>
---	--	---

<p>SHARGEL [26] - 1639:17, 1640:12, 1656:17, 1721:11, 1775:1, 1780:1, 1798:1, 1798:9, 1798:12, 1799:5, 1799:8, 1799:11, 1799:21, 1799:25, 1800:4, 1800:7, 1800:9, 1800:12, 1800:16, 1820:1, 1837:7, 1838:2, 1838:3, 1855:7, 1859:1, 1868:1</p> <p>Shargel's [1] - 1799:15</p> <p>Sharwin [2] - 1782:2, 1782:13</p> <p>sheet [2] - 1772:11, 1830:24</p> <p>sheets [1] - 1850:4</p> <p>Sherwin [1] - 1782:1</p> <p>shifts [1] - 1846:15</p> <p>shipment [1] - 1716:20</p> <p>shipments [1] - 1684:21</p> <p>shipped [2] - 1717:19, 1802:12</p> <p>shit [3] - 1670:21, 1684:5</p> <p>shock [1] - 1667:4</p> <p>shocked [3] - 1832:22, 1832:25, 1833:1</p> <p>shooting [1] - 1730:14</p> <p>short [27] - 1669:23, 1690:24, 1735:4, 1735:6, 1735:8, 1737:1, 1784:22, 1784:25, 1785:1, 1785:3, 1785:7, 1785:8, 1785:11, 1785:13, 1787:4, 1787:6, 1790:23, 1795:22, 1799:20, 1800:18, 1832:24, 1841:12, 1841:13, 1841:16, 1841:17</p> <p>Short [1] - 1668:7</p> <p>shortage [2] - 1865:11, 1865:12</p> <p>shortly [1] - 1855:2</p> <p>Shortman [16] - 1667:21, 1669:21, 1669:23, 1670:1, 1670:3, 1670:6, 1670:8, 1670:9, 1670:10, 1693:6, 1734:17, 1734:18, 1734:19, 1735:2, 1735:5, 1739:18</p> <p>shot [9] - 1650:3, 1651:18, 1698:6, 1698:7, 1701:13, 1731:15, 1731:17</p> <p>shots [1] - 1696:23</p> <p>shove [1] - 1842:15</p> <p>show [32] - 1653:12, 1663:7, 1663:17, 1663:24, 1679:11, 1722:12, 1727:11, 1735:14, 1751:11, 1751:14, 1752:14, 1754:10, 1754:22, 1758:20, 1759:24, 1761:5, 1764:6, 1764:13, 1767:13, 1767:17, 1781:3, 1786:18, 1805:12, 1818:20, 1820:20, 1822:12, 1833:1, 1835:2, 1846:10, 1859:15</p> <p>showed [11] - 1662:8, 1663:8, 1663:24, 1663:25, 1719:7, 1735:7, 1760:14, 1772:22, 1784:19, 1789:10, 1826:22</p> <p>showing [3] - 1767:9, 1780:24, 1859:16</p> <p>shown [8] - 1662:9, 1717:5, 1718:1, 1789:4, 1867:7, 1867:8, 1867:9</p> <p>shows [9] - 1644:4, 1701:6, 1716:20, 1724:4, 1785:6, 1790:13, 1836:24, 1857:17, 1859:11</p> <p>SHU [1] - 1677:4</p>	<p>shut [7] - 1643:11, 1660:9, 1686:21, 1711:25, 1712:11, 1712:13</p> <p>shuttle [1] - 1860:1</p> <p>Side [1] - 1837:6</p> <p>side [4] - 1801:19, 1809:18, 1841:21, 1841:22</p> <p>sides [2] - 1775:2, 1815:1</p> <p>sifting [1] - 1814:7</p> <p>sight [1] - 1686:23</p> <p>sign [10] - 1700:19, 1701:16, 1706:22, 1707:12, 1707:18, 1709:10, 1710:19, 1710:24, 1796:21, 1864:9</p> <p>sign-in [1] - 1796:21</p> <p>signaling [1] - 1651:7</p> <p>signature [1] - 1717:22</p> <p>signed [3] - 1701:19, 1717:21, 1795:19</p> <p>significance [1] - 1791:10</p> <p>significant [3] - 1683:9, 1692:18, 1843:11</p> <p>signing [2] - 1709:6, 1712:21</p> <p>silence [1] - 1755:5</p> <p>silent [2] - 1790:18, 1790:23</p> <p>Silent [1] - 1647:21</p> <p>silly [1] - 1665:8</p> <p>Simel's [1] - 1712:20</p> <p>SIMELS [1] - 1639:5</p> <p>Simels [379] - 1639:18, 1642:13, 1643:22, 1643:25, 1646:14, 1647:2, 1649:2, 1649:4, 1649:12, 1649:13, 1649:16, 1650:15, 1650:21, 1652:9, 1652:13, 1653:1, 1656:5, 1658:9, 1658:16, 1660:18, 1660:21, 1662:6, 1662:22, 1663:13, 1664:15, 1664:18, 1666:22, 1667:9, 1669:17, 1671:21, 1673:11, 1673:24, 1679:14, 1679:22, 1679:23, 1679:25, 1680:4, 1680:5, 1680:11, 1680:20, 1681:1, 1681:3, 1681:6, 1682:1, 1682:4, 1682:7, 1683:8, 1683:19, 1683:23, 1685:9, 1685:11, 1687:5, 1687:25, 1691:24, 1692:7, 1692:10, 1692:21, 1693:1, 1693:23, 1694:11, 1694:12, 1695:5, 1695:16, 1696:2, 1696:9, 1696:22, 1696:23, 1697:2, 1697:10, 1698:15, 1700:6, 1700:15, 1701:6, 1701:21, 1703:1, 1703:19, 1704:16, 1707:7, 1707:14, 1707:21, 1709:6, 1709:7, 1710:5, 1710:20, 1711:19, 1711:20, 1711:21, 1713:11, 1713:19, 1713:20, 1713:23, 1713:25, 1714:5, 1714:8, 1714:18, 1715:17, 1716:10, 1716:11, 1717:18, 1717:25, 1722:4, 1726:11, 1726:19, 1726:24, 1726:25, 1727:7, 1727:16, 1728:4, 1728:12, 1730:18, 1732:22, 1732:25, 1734:24, 1735:2, 1737:2, 1737:4, 1737:18, 1738:5, 1742:14, 1742:18, 1742:25, 1743:13, 1743:22, 1745:10, 1745:18, 1748:2, 1748:21, 1753:4, 1753:5, 1753:15,</p>	<p>1754:14, 1754:17, 1755:4, 1759:15, 1766:18, 1768:23, 1771:11, 1774:5, 1775:15, 1775:19, 1775:24, 1775:25, 1780:15, 1780:25, 1781:5, 1781:20, 1782:5, 1782:10, 1782:22, 1783:2, 1783:5, 1783:11, 1783:14, 1783:18, 1784:4, 1784:18, 1784:23, 1785:2, 1785:6, 1785:13, 1785:16, 1785:21, 1785:22, 1786:3, 1786:14, 1786:25, 1787:14, 1787:15, 1787:20, 1788:1, 1788:6, 1788:8, 1788:23, 1789:4, 1789:6, 1789:10, 1789:14, 1789:19, 1789:22, 1790:2, 1790:6, 1790:19, 1790:20, 1791:25, 1792:3, 1792:12, 1792:16, 1792:17, 1792:20, 1793:7, 1793:10, 1795:14, 1795:18, 1795:21, 1796:18, 1796:20, 1797:8, 1801:1, 1801:14, 1801:15, 1801:22, 1802:1, 1802:12, 1802:24, 1803:22, 1803:25, 1804:3, 1804:23, 1805:4, 1805:11, 1805:14, 1805:16, 1805:20, 1806:1, 1806:20, 1807:8, 1807:14, 1807:15, 1807:17, 1808:5, 1808:6, 1808:12, 1808:17, 1808:18, 1808:21, 1809:1, 1809:25, 1810:6, 1810:10, 1810:15, 1811:11, 1814:1, 1815:4, 1815:9, 1815:10, 1815:16, 1815:19, 1816:21, 1817:5, 1817:14, 1818:2, 1818:10, 1818:21, 1819:6, 1820:6, 1821:1, 1821:4, 1821:14, 1821:19, 1821:21, 1821:24, 1822:12, 1822:24, 1823:2, 1823:3, 1823:5, 1823:22, 1824:4, 1824:14, 1824:24, 1826:5, 1826:16, 1826:25, 1827:5, 1827:6, 1827:10, 1828:2, 1828:3, 1829:11, 1829:16, 1829:23, 1830:1, 1830:22, 1831:7, 1831:19, 1831:23, 1834:9, 1834:25, 1835:1, 1835:4, 1835:5, 1836:1, 1836:3, 1836:7, 1836:9, 1836:20, 1838:13, 1838:15, 1839:4, 1839:25, 1840:2, 1840:4, 1840:7, 1840:16, 1840:20, 1840:24, 1840:25, 1841:8, 1841:19, 1841:25, 1842:3, 1842:7, 1842:14, 1842:15, 1842:17, 1842:23, 1843:15, 1844:11, 1844:15, 1844:17, 1844:22, 1845:25, 1846:3, 1846:8, 1846:16, 1847:4, 1847:5, 1847:16, 1848:6, 1848:10, 1849:12, 1849:24, 1850:17, 1850:22, 1851:6, 1851:20, 1853:1, 1853:9, 1853:10, 1853:21, 1854:5, 1854:22, 1855:10, 1855:13, 1855:16, 1855:22, 1855:23, 1856:5, 1856:12, 1856:14, 1856:15, 1857:3, 1857:7, 1857:10, 1857:15, 1857:21, 1859:4, 1859:23, 1860:4, 1860:14, 1860:16, 1860:20, 1861:3, 1862:23, 1863:1, 1863:14, 1863:16, 1864:3, 1864:11, 1864:22, 1865:4, 1865:24, 1866:8, 1866:12, 1866:17, 1867:6, 1867:11, 1868:21</p> <p>Simels' [5] - 1761:22, 1845:14,</p>
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<p>1845:20, 1846:20, 1852:1</p> <p>Simels's [15] - 1654:19, 1662:1, 1666:12, 1689:2, 1768:15, 1775:13, 1810:8, 1811:8, 1811:10, 1814:6, 1820:21, 1824:11, 1829:23, 1830:3, 1835:17</p> <p>similar [3] - 1649:17, 1663:4, 1663:8</p> <p>similarly [2] - 1787:17, 1787:18</p> <p>simple [9] - 1643:16, 1652:18, 1660:20, 1668:15, 1757:24, 1773:8, 1773:9, 1773:10, 1827:11</p> <p>simply [8] - 1640:18, 1669:2, 1744:23, 1747:13, 1752:2, 1798:2, 1816:12, 1818:11</p> <p>Singh [8] - 1667:3, 1702:23, 1742:24, 1750:18, 1757:6, 1757:10, 1757:13</p> <p>single [17] - 1722:4, 1724:16, 1725:12, 1725:13, 1727:6, 1731:2, 1738:24, 1739:17, 1739:19, 1765:12, 1765:15, 1770:7, 1775:16, 1777:13, 1840:10, 1857:17</p> <p>sit [3] - 1773:14, 1785:23, 1794:18</p> <p>sits [1] - 1763:13</p> <p>sitting [6] - 1692:22, 1743:22, 1774:20, 1780:3, 1830:22, 1843:23</p> <p>situation [8] - 1653:25, 1678:16, 1700:17, 1797:16, 1803:1, 1807:24, 1808:25, 1841:10</p> <p>situations [1] - 1821:15</p> <p>six [7] - 1665:6, 1694:11, 1733:18, 1767:9, 1815:17, 1854:8, 1860:15</p> <p>size [1] - 1736:20</p> <p>skulduggery [1] - 1825:6</p> <p>skulduggery [1] - 1804:1</p> <p>slacks [1] - 1652:4</p> <p>slender [2] - 1707:22, 1707:23</p> <p>slide [1] - 1859:15</p> <p>slight [2] - 1824:25, 1846:4</p> <p>slightest [3] - 1824:23, 1846:13, 1846:15</p> <p>slightly [1] - 1663:24</p> <p>sling [1] - 1861:7</p> <p>slot [2] - 1760:6, 1760:7</p> <p>slow [1] - 1838:7</p> <p>small [2] - 1679:8, 1719:18</p> <p>smaller [2] - 1802:21, 1803:2</p> <p>smart [1] - 1794:7</p> <p>Smith [5] - 1718:14, 1720:5, 1720:7, 1802:8, 1848:21</p> <p>soap [1] - 1869:9</p> <p>social [2] - 1701:24, 1736:17</p> <p>software [4] - 1718:17, 1718:20, 1718:23, 1805:2</p> <p>SOLANO [10] - 1639:19, 1702:19, 1721:12, 1728:7, 1728:10, 1728:12, 1739:23, 1740:5, 1741:9, 1760:1</p> <p>sOLANO [1] - 1722:1</p> <p>Solano [18] - 1641:22, 1642:3, 1721:11, 1740:3, 1741:8, 1774:25, 1775:5, 1776:3, 1776:4, 1776:6,</p>	<p>1778:24, 1788:13, 1806:4, 1811:2, 1815:6, 1818:24, 1834:24, 1839:11</p> <p>Solano's [1] - 1820:5</p> <p>sole [3] - 1833:4, 1833:7, 1845:14</p> <p>soliciting [2] - 1819:6, 1819:7</p> <p>solution [7] - 1668:15, 1668:18, 1669:8, 1682:13, 1682:23, 1700:3, 1857:8</p> <p>someone [30] - 1651:14, 1656:11, 1660:22, 1661:9, 1666:10, 1666:11, 1680:4, 1686:11, 1731:11, 1747:19, 1749:22, 1757:13, 1774:5, 1790:19, 1794:17, 1795:7, 1810:11, 1810:12, 1819:14, 1819:15, 1823:3, 1828:9, 1828:24, 1830:18, 1834:13, 1844:3, 1844:23, 1850:19, 1856:1, 1865:7</p> <p>sometimes [10] - 1734:2, 1761:7, 1800:24, 1814:23, 1818:6, 1823:23, 1823:24, 1825:25</p> <p>somewhat [1] - 1828:9</p> <p>son [3] - 1693:5, 1694:15, 1844:21</p> <p>Son [19] - 1664:8, 1667:1, 1686:24, 1687:8, 1688:11, 1688:12, 1689:25, 1690:6, 1692:2, 1692:21, 1696:24, 1766:3, 1766:5, 1766:8, 1768:2, 1768:12, 1771:1</p> <p>Son's [8] - 1688:3, 1689:3, 1689:13, 1690:17, 1692:6, 1692:7, 1694:17, 1712:13</p> <p>soon [2] - 1658:8, 1775:7</p> <p>sorry [10] - 1640:12, 1656:15, 1737:11, 1749:4, 1750:9, 1757:20, 1802:3, 1810:21, 1821:18, 1861:23</p> <p>sort [4] - 1668:20, 1734:4, 1744:23, 1816:7</p> <p>sorts [1] - 1820:10</p> <p>sought [1] - 1782:17</p> <p>sound [2] - 1716:25, 1758:11</p> <p>sounds [3] - 1643:6, 1643:7, 1726:2</p> <p>source [2] - 1759:20, 1760:3</p> <p>South [1] - 1699:16</p> <p>space [1] - 1860:1</p> <p>speaking [15] - 1687:15, 1717:1, 1727:13, 1750:9, 1750:10, 1758:12, 1768:3, 1778:13, 1785:4, 1787:1, 1796:15, 1796:17, 1812:13, 1832:8, 1860:4</p> <p>spec [1] - 1775:21</p> <p>special [1] - 1769:18</p> <p>speciality [1] - 1737:12</p> <p>specific [8] - 1661:4, 1665:23, 1667:17, 1672:9, 1731:20, 1735:1, 1772:5, 1772:12</p> <p>specifically [12] - 1650:7, 1674:6, 1687:15, 1726:11, 1731:24, 1746:20, 1748:20, 1760:14, 1804:5, 1821:11, 1821:20</p> <p>specifics [1] - 1825:10</p> <p>speculative [1] - 1854:24</p> <p>spend [1] - 1814:22</p>	<p>spending [2] - 1789:7, 1815:4</p> <p>spent [2] - 1714:12, 1777:25</p> <p>spins [1] - 1839:7</p> <p>spoken [6] - 1648:19, 1683:19, 1766:8, 1774:1, 1776:15, 1824:6</p> <p>sponsorship [1] - 1801:5</p> <p>spots [1] - 1727:10</p> <p>spotter [1] - 1645:10</p> <p>spouses [1] - 1796:14</p> <p>spouting [1] - 1658:23</p> <p>spring [2] - 1788:8, 1852:20</p> <p>sprinkled [1] - 1812:17</p> <p>sprinkling [2] - 1780:12, 1825:7</p> <p>Squad [5] - 1646:6, 1651:12, 1652:15, 1686:22, 1695:1</p> <p>stage [2] - 1641:6, 1709:9</p> <p>stamped [1] - 1850:22</p> <p>stand [44] - 1641:10, 1647:2, 1648:2, 1648:23, 1648:24, 1650:13, 1650:16, 1651:23, 1654:13, 1654:21, 1654:22, 1654:24, 1656:5, 1657:3, 1666:19, 1667:11, 1670:23, 1678:14, 1682:7, 1686:3, 1695:5, 1696:24, 1697:4, 1698:11, 1698:24, 1699:8, 1699:24, 1699:25, 1711:24, 1714:12, 1775:15, 1778:24, 1804:25, 1805:14, 1821:5, 1832:16, 1833:23, 1834:17, 1840:9, 1840:12, 1842:9, 1842:10, 1846:17, 1852:12</p> <p>standard [1] - 1813:25</p> <p>standing [1] - 1869:9</p> <p>standpoint [1] - 1856:22</p> <p>stands [2] - 1838:20, 1838:21</p> <p>star [1] - 1681:25</p> <p>start [17] - 1651:8, 1679:24, 1687:16, 1695:25, 1703:16, 1706:23, 1728:22, 1732:18, 1775:3, 1776:8, 1791:21, 1792:5, 1799:9, 1814:20, 1864:14</p> <p>started [11] - 1681:16, 1728:1, 1775:9, 1791:24, 1792:6, 1797:13, 1804:2, 1809:22, 1833:13, 1851:11</p> <p>starting [2] - 1727:20, 1851:6</p> <p>starts [5] - 1650:22, 1676:23, 1734:25, 1754:25, 1775:12</p> <p>State [2] - 1830:19, 1855:25</p> <p>state [1] - 1668:1</p> <p>statement [11] - 1707:17, 1710:25, 1773:16, 1776:14, 1776:15, 1795:12, 1848:7, 1861:16, 1862:5, 1868:12, 1868:18</p> <p>STATES [3] - 1639:1, 1639:3, 1639:10</p> <p>States [45] - 1639:13, 1645:24, 1684:2, 1697:18, 1713:14, 1716:4, 1716:21, 1720:24, 1763:4, 1785:1, 1785:9, 1788:15, 1788:16, 1793:21, 1794:4, 1794:22, 1795:5, 1801:21, 1802:14, 1802:15, 1805:22, 1806:12, 1806:15, 1806:16, 1806:22, 1807:2, 1807:3, 1807:4, 1807:17, 1808:7, 1809:9, 1822:4, 1835:11, 1848:8, 1848:19,</p>
--	---	---

<p>1848:22, 1849:3, 1849:5, 1849:10, 1849:16, 1849:18, 1865:19, 1865:22</p> <p>stating [2] - 1658:14, 1787:8</p> <p>statute [1] - 1866:18</p> <p>stay [2] - 1686:1, 1739:16</p> <p>stayed [1] - 1834:15</p> <p>stenography [1] - 1639:24</p> <p>step [4] - 1780:7, 1780:9, 1780:23, 1852:16</p> <p>steps [1] - 1713:1</p> <p>Steve [6] - 1767:1, 1788:18, 1793:7, 1823:2, 1831:24, 1832:3</p> <p>STEVEN [1] - 1639:14</p> <p>still [16] - 1640:3, 1673:21, 1684:9, 1686:4, 1717:4, 1726:8, 1726:9, 1728:21, 1758:16, 1762:22, 1798:25, 1815:8, 1831:4, 1839:25, 1846:5</p> <p>sting [2] - 1857:16, 1863:2</p> <p>stinging [5] - 1860:21, 1860:24, 1860:25, 1861:3</p> <p>stitch [1] - 1725:10</p> <p>stone [1] - 1868:20</p> <p>stop [11] - 1666:18, 1688:12, 1711:16, 1743:3, 1743:5, 1744:21, 1744:22, 1797:7, 1842:1, 1846:9, 1863:13</p> <p>stopped [3] - 1643:3, 1676:15, 1678:3</p> <p>stopped [1] - 1687:18</p> <p>stops [1] - 1705:9</p> <p>stories [6] - 1702:12, 1702:15, 1707:6, 1707:8, 1833:9</p> <p>story [13] - 1700:4, 1722:1, 1798:4, 1815:21, 1816:13, 1816:17, 1826:18, 1827:13, 1830:25, 1840:23, 1841:1, 1841:7, 1864:13</p> <p>straight [5] - 1686:11, 1772:20, 1847:25, 1848:2, 1852:13</p> <p>strange [2] - 1734:25, 1858:10</p> <p>stranger [1] - 1857:9</p> <p>strategy [2] - 1830:9, 1830:11</p> <p>Street [3] - 1690:10, 1703:15, 1775:19</p> <p>streets [1] - 1846:25</p> <p>stress [1] - 1753:23</p> <p>stretch [3] - 1647:25, 1648:5, 1648:8</p> <p>strike [6] - 1658:12, 1672:21, 1676:7, 1676:11, 1682:17, 1712:2</p> <p>striking [1] - 1678:20</p> <p>string [1] - 1696:18</p> <p>strip [5] - 1703:14, 1703:20, 1703:21, 1757:8, 1832:5</p> <p>stripper [2] - 1704:2, 1704:4</p> <p>stroke [1] - 1698:4</p> <p>strongly [1] - 1869:3</p> <p>stuck [1] - 1805:11</p> <p>study [1] - 1812:9</p> <p>stuff [20] - 1662:15, 1715:25, 1716:6, 1718:4, 1718:6, 1718:11, 1718:14, 1718:24, 1719:23, 1720:20, 1732:16, 1758:5, 1759:6, 1778:1, 1778:4, 1799:14, 1799:15, 1814:23, 1856:11</p> <p>stupid [4] - 1680:3, 1685:3, 1685:4,</p>	<p>1747:18</p> <p>subject [10] - 1815:8, 1825:5, 1825:8, 1826:16, 1827:6, 1829:2, 1831:18, 1845:6, 1849:5, 1849:18</p> <p>submissions [1] - 1847:9</p> <p>submit [17] - 1656:4, 1666:12, 1685:17, 1685:19, 1692:12, 1716:17, 1741:13, 1761:13, 1765:15, 1772:12, 1795:13, 1810:9, 1824:6, 1827:15, 1835:19, 1859:8, 1862:4</p> <p>submitted [2] - 1868:14, 1868:15</p> <p>suborning [1] - 1823:14</p> <p>subpoena [6] - 1851:9, 1851:10, 1858:1, 1858:3, 1865:6</p> <p>subscriber [1] - 1672:17</p> <p>substance [4] - 1813:20</p> <p>substantial [5] - 1712:6, 1713:1, 1780:7, 1780:9, 1780:23</p> <p>subtext [1] - 1798:5</p> <p>subtly [1] - 1823:23</p> <p>sudden [2] - 1726:12, 1841:12</p> <p>suddenly [2] - 1674:24, 1675:1</p> <p>sufficient [1] - 1831:18</p> <p>suggest [6] - 1764:9, 1794:6, 1804:25, 1820:24, 1828:8, 1861:17</p> <p>suggested [4] - 1785:17, 1791:7, 1810:15, 1861:20</p> <p>suggesting [8] - 1723:25, 1733:2, 1794:15, 1795:18, 1806:20, 1844:6, 1850:13, 1851:20</p> <p>suggestion [13] - 1671:11, 1735:10, 1781:20, 1783:9, 1783:21, 1810:10, 1820:13, 1822:15, 1828:20, 1844:8, 1849:12, 1851:21, 1861:19</p> <p>suggestions [3] - 1707:1, 1723:1, 1764:21</p> <p>suggests [2] - 1762:18, 1766:10</p> <p>summarize [1] - 1681:24</p> <p>summary [1] - 1739:6</p> <p>summation [15] - 1642:1, 1722:9, 1726:14, 1775:4, 1775:17, 1780:20, 1781:12, 1820:4, 1820:5, 1837:16, 1838:5, 1864:6, 1864:7, 1869:1, 1869:11</p> <p>summations [4] - 1641:7, 1642:1, 1812:2</p> <p>summer [3] - 1788:7, 1788:8, 1852:19</p> <p>supervised [1] - 1786:13</p> <p>supervision [2] - 1827:24</p> <p>supplied [1] - 1782:8</p> <p>supplies [1] - 1803:5</p> <p>supply [8] - 1717:21, 1760:4, 1760:6, 1761:6, 1761:15, 1762:9, 1805:17</p> <p>supplying [2] - 1819:15, 1841:16</p> <p>support [8] - 1781:4, 1781:18, 1782:23, 1801:24, 1801:25, 1828:19, 1841:23, 1866:16</p> <p>supported [2] - 1725:10, 1841:18</p> <p>supporter [1] - 1811:10</p> <p>supports [1] - 1846:21</p>	<p>suppose [3] - 1666:16, 1796:3, 1813:17</p> <p>supposed [19] - 1730:10, 1736:16, 1767:12, 1768:4, 1786:17, 1790:20, 1790:21, 1790:22, 1794:8, 1794:9, 1794:10, 1794:19, 1818:17, 1823:13, 1831:14, 1854:4, 1856:11, 1857:20</p> <p>supposedly [2] - 1730:19, 1750:15</p> <p>surely [1] - 1830:3</p> <p>surprise [2] - 1697:23, 1808:21</p> <p>surprised [3] - 1666:16, 1817:18, 1817:21</p> <p>surreptitious [1] - 1718:7</p> <p>surreptitiously [1] - 1720:14</p> <p>surveillance [10] - 1758:22, 1760:21, 1761:21, 1762:3, 1762:15, 1762:21, 1763:13, 1772:23, 1773:3</p> <p>suspect [3] - 1644:13, 1652:3, 1838:19</p> <p>suspense [1] - 1838:24</p> <p>sustained [1] - 1656:19</p> <p>swallowed [1] - 1830:24</p> <p>swearing [1] - 1846:9</p> <p>swinging [1] - 1691:8</p> <p>switch [1] - 1828:17</p> <p>Switzerland [1] - 1770:23</p> <p>swore [2] - 1724:1, 1844:13</p> <p>sworn [3] - 1710:25, 1848:7, 1852:9</p> <p>sympathy [1] - 1644:14</p> <p>system [7] - 1659:5, 1713:16, 1719:12, 1719:15, 1759:13, 1806:23, 1807:1</p>
T		
<p>T-10 [2] - 1652:19, 1659:12</p> <p>T-13 [1] - 1654:1</p> <p>T-18 [1] - 1705:8</p> <p>T-26 [1] - 1708:16</p> <p>T-28 [1] - 1703:10</p> <p>T-30 [1] - 1694:11</p> <p>table [3] - 1644:20, 1716:16, 1808:10</p> <p>tailored [1] - 1846:3</p> <p>tails [1] - 1756:13</p> <p>talks [9] - 1648:1, 1684:13, 1707:21, 1710:5, 1733:17, 1754:4, 1754:5, 1763:24, 1771:1</p> <p>tall [1] - 1734:23</p> <p>Tallman [1] - 1734:23</p> <p>tame [1] - 1858:15</p> <p>tamper [3] - 1643:2, 1691:19, 1852:15</p> <p>tampering [7] - 1643:5, 1711:4, 1711:7, 1711:15, 1779:14, 1787:23, 1845:19</p> <p>tap [1] - 1719:13</p> <p>tape [21] - 1646:15, 1668:22, 1682:21, 1683:16, 1686:25, 1705:9, 1706:10, 1726:21, 1824:1, 1824:2, 1827:5, 1858:5, 1858:14, 1859:21, 1859:22, 1859:24, 1861:10, 1861:24, 1863:3,</p>		

<p>1865:5</p> <p>Tape [5] - 1676:15, 1678:3, 1687:18</p> <p>tape-recorder [3] - 1858:5, 1858:14</p> <p>tape-recordings [1] - 1683:16</p> <p>tapes [31] - 1661:25, 1664:10, 1664:13, 1682:14, 1683:18, 1683:25, 1684:3, 1684:13, 1685:12, 1690:15, 1690:17, 1697:5, 1702:24, 1712:12, 1778:14, 1803:10, 1803:12, 1803:13, 1803:15, 1815:3, 1823:20, 1825:6, 1825:7, 1825:16, 1825:17, 1859:20, 1859:21, 1864:25</p> <p>tapping [1] - 1782:7</p> <p>target [4] - 1667:6, 1672:3, 1686:23, 1718:21</p> <p>targets [2] - 1666:24, 1842:6</p> <p>taxes [2] - 1724:12, 1832:13</p> <p>taxpayers [1] - 1832:12</p> <p>tea [1] - 1832:2</p> <p>team [2] - 1699:9, 1819:17</p> <p>technician [1] - 1724:25</p> <p>technique [3] - 1668:14, 1767:6, 1767:16</p> <p>techniques [2] - 1829:5, 1863:21</p> <p>telephone [6] - 1684:11, 1703:10, 1719:14, 1719:20, 1794:13, 1806:23</p> <p>television [1] - 1864:12</p> <p>tell-all [4] - 1836:23, 1839:9, 1839:10, 1839:24</p> <p>telling [1] - 1840:1</p> <p>temerity [1] - 1792:19</p> <p>ten [7] - 1689:6, 1733:17, 1777:23, 1817:23, 1834:4, 1834:6, 1848:9</p> <p>term [3] - 1746:16, 1746:17, 1829:9</p> <p>terms [9] - 1677:14, 1680:3, 1682:25, 1732:3, 1737:8, 1747:18, 1774:10, 1786:10, 1849:18</p> <p>terrible [1] - 1675:1</p> <p>terrified [1] - 1698:2</p> <p>terrifying [1] - 1643:17</p> <p>test [8] - 1648:7, 1769:15, 1769:19, 1769:20, 1769:23, 1770:2, 1785:16</p> <p>testified [21] - 1655:12, 1655:13, 1662:5, 1679:3, 1679:9, 1713:22, 1715:14, 1723:7, 1725:12, 1731:2, 1759:17, 1761:7, 1784:18, 1809:7, 1811:14, 1828:3, 1841:11, 1847:15, 1853:24, 1855:24, 1863:18</p> <p>testifies [2] - 1692:21, 1706:22</p> <p>testify [52] - 1648:3, 1650:6, 1661:6, 1661:9, 1661:23, 1662:10, 1662:11, 1662:20, 1662:21, 1663:20, 1667:9, 1667:10, 1667:11, 1668:7, 1668:20, 1669:19, 1670:5, 1670:9, 1670:13, 1670:20, 1671:24, 1672:2, 1673:8, 1673:12, 1673:19, 1678:5, 1678:6, 1678:15, 1686:13, 1686:16, 1686:25, 1692:11, 1693:7, 1693:18, 1694:6, 1696:25, 1697:18, 1699:9, 1701:15, 1702:18, 1703:5, 1704:13, 1706:2,</p>	<p>1706:23, 1713:5, 1734:18, 1737:4, 1820:12, 1830:20, 1848:22</p> <p>testifying [8] - 1656:9, 1662:8, 1664:9, 1689:4, 1733:25, 1739:9, 1819:16, 1856:13</p> <p>testimony [57] - 1641:10, 1654:19, 1654:24, 1656:20, 1658:7, 1659:1, 1659:11, 1660:19, 1660:23, 1661:1, 1661:2, 1661:13, 1661:25, 1666:12, 1667:13, 1669:20, 1671:17, 1682:14, 1683:15, 1689:2, 1704:14, 1711:16, 1714:13, 1714:16, 1714:20, 1714:21, 1714:22, 1716:13, 1721:3, 1724:18, 1725:8, 1735:1, 1736:10, 1765:2, 1768:6, 1777:16, 1780:13, 1786:8, 1792:1, 1796:3, 1796:12, 1811:19, 1818:1, 1830:20, 1833:6, 1833:15, 1835:7, 1840:8, 1842:22, 1844:12, 1846:8, 1848:25, 1849:8, 1856:18, 1856:19, 1863:15</p> <p>thanked [1] - 1768:17</p> <p>THE [54] - 1639:9, 1640:2, 1640:10, 1640:14, 1640:20, 1640:23, 1641:2, 1642:6, 1647:7, 1647:12, 1656:19, 1688:5, 1688:9, 1690:21, 1690:24, 1691:3, 1691:7, 1691:15, 1692:14, 1702:20, 1721:9, 1728:5, 1728:8, 1728:11, 1739:21, 1739:24, 1740:3, 1740:6, 1741:3, 1741:5, 1741:7, 1774:25, 1798:8, 1798:11, 1798:13, 1798:16, 1799:1, 1799:7, 1799:9, 1799:12, 1799:17, 1799:19, 1799:22, 1800:2, 1800:6, 1800:8, 1800:11, 1800:13, 1800:15, 1837:13, 1838:2, 1855:6, 1868:23, 1869:21</p> <p>theirs [1] - 1809:19</p> <p>theme [1] - 1830:5</p> <p>themselves [6] - 1648:18, 1783:22, 1790:17, 1818:19, 1849:18, 1867:13</p> <p>theory [1] - 1852:12</p> <p>therefore [2] - 1807:19, 1860:11</p> <p>thinking [14] - 1751:13, 1751:14, 1751:21, 1751:22, 1759:16, 1775:9, 1776:1, 1795:23, 1825:3, 1837:5, 1843:7, 1853:20, 1863:13</p> <p>thinks [7] - 1666:19, 1677:5, 1698:9, 1706:15, 1715:23, 1723:15, 1725:5</p> <p>third [1] - 1739:8</p> <p>Thirteen [1] - 1808:23</p> <p>thirty [5] - 1657:2, 1687:17, 1740:5, 1800:7, 1853:24</p> <p>thirty-five [2] - 1800:7, 1853:24</p> <p>thirty-two [1] - 1687:17</p> <p>thorough [1] - 1738:1</p> <p>thoughts [1] - 1725:24</p> <p>thousand [15] - 1704:17, 1712:11, 1744:14, 1745:22, 1745:23, 1747:6, 1747:7, 1747:8, 1750:3, 1753:2, 1761:18, 1762:6, 1819:9, 1819:12, 1827:12</p>	<p>thousands [1] - 1762:1</p> <p>threat [1] - 1697:1</p> <p>threaten [6] - 1640:16, 1640:21, 1678:8, 1749:7, 1772:18, 1783:11</p> <p>threatening [2] - 1677:10, 1771:4</p> <p>threats [1] - 1711:15</p> <p>three [15] - 1651:4, 1693:10, 1703:2, 1706:25, 1711:6, 1717:10, 1755:5, 1776:10, 1783:17, 1799:17, 1804:20, 1811:4, 1814:3, 1825:25, 1840:9</p> <p>three-way [1] - 1703:2</p> <p>threw [2] - 1684:4</p> <p>throughout [1] - 1825:16</p> <p>throw [6] - 1672:16, 1706:25, 1745:12, 1745:21, 1756:16, 1756:17</p> <p>throws [1] - 1684:10</p> <p>thug [2] - 1832:14, 1849:23</p> <p>tic [1] - 1840:6</p> <p>tie [1] - 1766:20</p> <p>tighten [3] - 1691:12, 1828:4, 1828:12</p> <p>Timber [6] - 1646:24, 1647:18, 1717:18, 1754:16, 1757:20</p> <p>timber [2] - 1669:13, 1729:20</p> <p>time-sheets [1] - 1850:4</p> <p>tips [1] - 1846:13</p> <p>tired [2] - 1812:25, 1813:4</p> <p>tireless [1] - 1867:9</p> <p>Title [3] - 1794:24, 1795:1</p> <p>to-do [1] - 1851:1</p> <p>today [7] - 1641:8, 1641:20, 1717:11, 1717:12, 1790:9, 1798:25, 1799:9</p> <p>together [9] - 1711:21, 1726:6, 1790:2, 1801:20, 1816:4, 1835:18, 1855:1, 1855:2, 1863:25</p> <p>tomorrow [8] - 1750:22, 1779:6, 1800:1, 1806:14, 1837:12, 1837:15, 1869:1, 1869:10</p> <p>Tony [14] - 1736:3, 1776:24, 1777:11, 1814:15, 1814:17, 1823:16, 1830:13, 1830:17, 1830:20, 1830:25, 1854:2, 1855:25, 1868:10, 1868:13</p> <p>took [15] - 1650:2, 1656:5, 1656:7, 1660:20, 1666:22, 1706:25, 1713:1, 1749:17, 1760:21, 1763:9, 1792:15, 1799:17, 1829:20, 1834:6, 1838:1</p> <p>tool [1] - 1825:4</p> <p>tools [1] - 1825:2</p> <p>tooth [1] - 1840:8</p> <p>top [5] - 1720:12, 1770:21, 1850:23, 1851:2, 1861:14</p> <p>topic [4] - 1674:1, 1674:4, 1737:2, 1826:3</p> <p>torture [2] - 1645:6, 1835:12</p> <p>tortured [2] - 1833:4, 1833:8</p> <p>total [1] - 1783:17</p> <p>totally [4] - 1810:1, 1822:14, 1826:9, 1826:20</p> <p>touch [3] - 1674:2, 1763:23, 1763:25</p> <p>touched [3] - 1744:11, 1763:23, 1815:6</p>
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<p>touching ^[1] - 1680:16</p> <p>tough ^[1] - 1778:14</p> <p>Tough ^[2] - 1802:6, 1802:7</p> <p>tour ^[1] - 1796:4</p> <p>toward ^[1] - 1780:7</p> <p>towards ^[3] - 1712:7, 1737:9, 1775:5</p> <p>town ^[2] - 1701:5, 1701:14</p> <p>track ^[1] - 1672:16</p> <p>trafficking ^[2] - 1790:4, 1791:6</p> <p>trail ^[2] - 1706:12, 1851:22</p> <p>train ^[1] - 1720:6</p> <p>transaction ^[3] - 1706:9, 1708:3, 1859:16</p> <p>transactions ^[1] - 1683:12</p> <p>TRANSCRIPT ^[1] - 1639:9</p> <p>transcript ^[25] - 1639:24, 1656:13, 1659:11, 1659:22, 1678:2, 1689:13, 1689:20, 1689:22, 1692:2, 1703:10, 1726:20, 1727:14, 1727:19, 1738:20, 1739:6, 1742:8, 1770:1, 1854:10, 1859:24, 1861:18, 1861:23, 1861:24, 1862:1, 1862:4</p> <p>transcripts ^[11] - 1687:16, 1689:24, 1690:15, 1690:17, 1712:12, 1742:10, 1766:25, 1767:9, 1767:10, 1767:20, 1769:2</p> <p>trap ^[1] - 1857:16</p> <p>trash ^[1] - 1868:11</p> <p>travelled ^[3] - 1788:1, 1789:14, 1840:25</p> <p>treacherous ^[1] - 1849:13</p> <p>treasurer ^[1] - 1662:18</p> <p>Trenton ^[2] - 1830:19, 1855:25</p> <p>trial ^[27] - 1641:6, 1641:12, 1643:6, 1644:13, 1650:13, 1656:13, 1657:1, 1666:17, 1678:14, 1683:14, 1692:25, 1719:6, 1776:22, 1781:25, 1786:21, 1803:10, 1805:6, 1805:7, 1805:12, 1814:3, 1817:18, 1819:4, 1819:5, 1822:23, 1841:10, 1854:11</p> <p>TRIAL ^[1] - 1639:9</p> <p>trials ^[2] - 1771:8, 1771:10</p> <p>trick ^[2] - 1855:24, 1863:3</p> <p>tricky ^[1] - 1797:10</p> <p>tried ^[7] - 1659:6, 1660:3, 1671:4, 1685:14, 1695:1, 1757:8, 1834:5</p> <p>tries ^[1] - 1809:25</p> <p>trips ^[5] - 1789:16, 1791:15, 1791:16, 1823:4, 1854:9</p> <p>truck ^[1] - 1669:12</p> <p>true ^[56] - 1662:13, 1662:20, 1665:16, 1665:21, 1666:5, 1668:21, 1669:16, 1695:1, 1703:25, 1707:9, 1707:10, 1710:3, 1717:22, 1723:10, 1738:24, 1758:23, 1777:20, 1779:9, 1788:20, 1797:14, 1797:18, 1797:20, 1813:5, 1817:10, 1820:22, 1821:4, 1821:7, 1821:8, 1821:9, 1821:19, 1821:22, 1823:7, 1831:23, 1839:4, 1840:3, 1840:5, 1840:7, 1840:10, 1840:11,</p>	<p>1840:22, 1841:1, 1843:25, 1861:8, 1864:19</p> <p>true ^[1] - 1840:11</p> <p>trumped ^[1] - 1854:7</p> <p>trust ^[7] - 1664:4, 1701:20, 1735:21, 1797:10, 1839:14, 1839:19</p> <p>trusted ^[1] - 1798:5</p> <p>truth ^[45] - 1648:8, 1654:14, 1655:10, 1656:10, 1656:11, 1656:12, 1656:22, 1656:23, 1658:2, 1658:5, 1658:6, 1661:18, 1661:19, 1664:3, 1666:14, 1667:13, 1671:16, 1699:22, 1701:18, 1707:11, 1709:24, 1710:1, 1724:1, 1724:2, 1749:14, 1794:11, 1820:18, 1822:20, 1823:8, 1823:9, 1840:1, 1842:8, 1842:9, 1842:10, 1844:13, 1844:16, 1844:25, 1845:1, 1845:17</p> <p>truthful ^[1] - 1846:8</p> <p>truthfully ^[2] - 1656:9, 1694:6</p> <p>try ^[16] - 1685:25, 1686:19, 1687:8, 1691:11, 1726:5, 1732:22, 1733:11, 1737:6, 1760:8, 1799:6, 1836:17, 1840:25, 1853:3, 1853:5, 1864:21, 1865:3</p> <p>trying ^[41] - 1650:18, 1655:16, 1656:10, 1656:11, 1659:5, 1660:18, 1664:4, 1666:11, 1666:19, 1667:7, 1671:6, 1682:7, 1683:20, 1685:10, 1693:16, 1697:2, 1697:12, 1697:16, 1697:21, 1698:5, 1707:9, 1708:22, 1708:23, 1728:22, 1742:19, 1744:15, 1749:15, 1749:16, 1756:6, 1756:10, 1798:2, 1812:11, 1817:6, 1818:16, 1831:11, 1836:16, 1839:25, 1843:17, 1846:8, 1853:16</p> <p>Tuesday ^[1] - 1708:7</p> <p>turn ^[7] - 1716:12, 1803:10, 1803:14, 1803:15, 1803:19, 1808:14, 1820:9</p> <p>turned ^[7] - 1700:9, 1700:12, 1782:9, 1803:12, 1828:7, 1841:1, 1868:21</p> <p>turning ^[3] - 1780:17, 1798:16, 1864:12</p> <p>turns ^[1] - 1660:1</p> <p>TV ^[3] - 1833:1, 1838:4, 1865:20</p> <p>Twelve ^[1] - 1808:22</p> <p>twenty ^[1] - 1860:15</p> <p>twenty-six ^[1] - 1860:15</p> <p>twice ^[10] - 1714:9, 1783:16, 1783:20, 1825:25, 1833:20, 1833:21, 1833:22, 1839:10, 1861:2</p> <p>twist ^[1] - 1722:5</p> <p>Two ^[1] - 1640:13</p> <p>two ^[55] - 1647:23, 1665:6, 1670:17, 1687:17, 1710:5, 1711:6, 1711:13, 1714:15, 1714:21, 1716:20, 1721:14, 1734:6, 1740:1, 1740:6, 1745:1, 1751:4, 1755:5, 1758:25, 1759:5, 1759:21, 1760:20, 1764:4, 1764:10, 1771:8, 1771:9, 1774:20, 1776:11, 1793:12, 1796:2, 1796:12, 1796:13,</p>	<p>1799:6, 1802:5, 1802:7, 1804:7, 1804:20, 1806:8, 1807:13, 1814:3, 1817:4, 1820:7, 1821:8, 1824:2, 1824:9, 1830:12, 1836:10, 1836:16, 1838:16, 1840:9, 1851:4, 1852:23, 1863:4, 1863:8</p> <p>type ^[1] - 1757:2</p> <p>types ^[1] - 1748:12</p> <p>typo ^[1] - 1787:1</p>
<div>U</div>		
<p>U.S ^[5] - 1639:4, 1639:15, 1684:21, 1739:13, 1832:12</p> <p>UF ^[1] - 1742:23</p> <p>ultimately ^[8] - 1777:19, 1778:7, 1778:8, 1802:16, 1810:24, 1823:13, 1835:15, 1868:14</p> <p>umm ^[6] - 1727:23, 1731:13, 1732:1, 1732:3, 1732:21</p> <p>Umm ^[3] - 1728:19, 1728:20, 1730:8</p> <p>unassailably ^[1] - 1777:20</p> <p>unbelievable ^[2] - 1791:20, 1791:21</p> <p>unchallenged ^[1] - 1831:7</p> <p>under ^[13] - 1671:6, 1713:13, 1793:18, 1795:14, 1801:5, 1808:21, 1831:13, 1833:19, 1846:9, 1848:10, 1857:22, 1864:24, 1866:13</p> <p>undercover ^[4] - 1863:21, 1864:8, 1865:8, 1865:12</p> <p>underline ^[1] - 1686:12</p> <p>undermine ^[5] - 1822:10, 1822:22, 1831:12, 1848:14, 1852:9</p> <p>underperform ^[1] - 1793:21</p> <p>underscored ^[1] - 1839:10</p> <p>understood ^[4] - 1644:2, 1660:11, 1748:25, 1800:11</p> <p>unfavorable ^[1] - 1752:5</p> <p>unfolded ^[1] - 1776:16</p> <p>unfortunate ^[1] - 1828:5</p> <p>unfortunately ^[2] - 1827:5, 1838:5</p> <p>unidentified ^[2] - 1742:24, 1750:19</p> <p>unintelligible ^[1] - 1861:8</p> <p>uninterrupted ^[1] - 1759:20</p> <p>uninterruptible ^[2] - 1760:3, 1760:6</p> <p>UNITED ^[3] - 1639:1, 1639:3, 1639:10</p> <p>United ^[46] - 1639:13, 1645:23, 1684:2, 1697:18, 1713:14, 1716:4, 1716:21, 1718:16, 1720:24, 1763:4, 1785:1, 1785:9, 1788:15, 1793:20, 1794:4, 1794:22, 1795:5, 1801:21, 1802:14, 1805:21, 1805:22, 1806:11, 1806:15, 1806:16, 1806:22, 1807:2, 1807:4, 1807:16, 1808:7, 1809:9, 1822:4, 1835:11, 1848:8, 1848:19, 1848:22, 1849:3, 1849:5, 1849:10, 1849:16, 1849:18, 1865:19, 1865:22</p> <p>universal ^[1] - 1760:3</p> <p>universe ^[2] - 1835:3</p>		

	V	
<p>unknowingly ^[1] - 1772:1</p> <p>unknown ^[1] - 1650:3</p> <p>unlawful ^[3] - 1780:22, 1845:22, 1858:12</p> <p>unleashing ^[2] - 1832:14, 1832:15</p> <p>unless ^[2] - 1798:6, 1822:3</p> <p>unlike ^[1] - 1796:23</p> <p>unlikely ^[1] - 1801:17</p> <p>unmistakable ^[4] - 1676:2, 1676:3, 1676:16</p> <p>unmonitored ^[2] - 1679:10, 1679:13</p> <p>unregistered ^[3] - 1672:14, 1672:15, 1672:18</p> <p>unrest ^[1] - 1801:19</p> <p>unseemly ^[1] - 1828:9</p> <p>unsigned ^[1] - 1775:11</p> <p>untoward ^[1] - 1784:15</p> <p>untrue ^[5] - 1662:21, 1665:22, 1666:5, 1700:15, 1701:12</p> <p>unwilling ^[1] - 1848:18</p> <p>up ^[111] - 1643:11, 1645:14, 1647:6, 1647:11, 1649:18, 1653:13, 1661:16, 1667:4, 1669:3, 1669:5, 1669:6, 1674:11, 1679:11, 1681:14, 1684:6, 1684:8, 1686:21, 1689:21, 1690:1, 1690:6, 1691:12, 1693:17, 1693:19, 1693:21, 1694:21, 1694:23, 1696:3, 1697:20, 1698:9, 1701:7, 1702:12, 1704:17, 1706:7, 1708:18, 1711:25, 1712:12, 1712:13, 1719:13, 1724:1, 1727:4, 1728:22, 1730:22, 1734:13, 1735:16, 1742:21, 1743:13, 1743:23, 1748:12, 1749:22, 1759:11, 1760:9, 1764:6, 1766:6, 1775:4, 1775:10, 1775:19, 1777:22, 1778:1, 1782:18, 1785:6, 1787:15, 1788:6, 1790:12, 1792:1, 1793:9, 1794:24, 1797:19, 1799:7, 1805:19, 1811:9, 1815:20, 1816:3, 1816:6, 1820:14, 1821:13, 1821:20, 1822:3, 1825:15, 1825:17, 1828:4, 1828:12, 1829:17, 1834:5, 1836:2, 1836:14, 1836:21, 1836:23, 1836:24, 1837:13, 1840:23, 1841:7, 1842:3, 1842:5, 1843:2, 1843:4, 1843:22, 1843:23, 1845:17, 1849:23, 1852:13, 1853:2, 1853:10, 1855:14, 1855:15, 1856:1, 1857:20, 1858:5, 1865:16</p> <p>uphold ^[1] - 1642:21</p> <p>upper ^[1] - 1826:22</p> <p>upright ^[1] - 1655:18</p> <p>upsetting ^[1] - 1642:16</p> <p>USB ^[1] - 1760:6</p> <p>useful ^[6] - 1718:6, 1718:25, 1807:6, 1807:10, 1807:20, 1807:21</p> <p>uses ^[2] - 1710:5, 1829:9</p> <p>usual ^[1] - 1703:22</p>	<p>valuable ^[6] - 1784:19, 1787:19, 1801:24, 1801:25, 1814:25</p> <p>value ^[5] - 1769:14, 1775:7, 1785:18, 1818:22, 1830:16</p> <p>variations ^[1] - 1830:4</p> <p>Vaughn ^[236] - 1640:16, 1640:19, 1645:3, 1645:7, 1645:9, 1645:18, 1648:2, 1649:2, 1649:4, 1649:15, 1649:17, 1650:6, 1650:8, 1650:12, 1650:13, 1650:16, 1650:18, 1650:20, 1651:7, 1651:16, 1652:18, 1654:8, 1655:23, 1658:10, 1658:18, 1659:24, 1660:8, 1662:3, 1662:4, 1662:8, 1662:13, 1662:17, 1663:1, 1663:5, 1663:17, 1664:16, 1664:18, 1665:2, 1665:3, 1665:5, 1665:23, 1665:24, 1665:25, 1666:25, 1667:4, 1667:12, 1668:1, 1668:16, 1668:22, 1669:21, 1670:2, 1672:3, 1672:9, 1673:5, 1673:9, 1673:23, 1676:20, 1676:23, 1679:14, 1680:9, 1680:11, 1681:5, 1682:4, 1682:14, 1682:15, 1682:23, 1684:5, 1684:16, 1685:1, 1685:13, 1687:1, 1691:21, 1694:11, 1694:14, 1694:16, 1696:3, 1696:10, 1696:16, 1697:15, 1697:23, 1698:3, 1698:20, 1699:11, 1700:5, 1700:23, 1703:4, 1703:6, 1703:13, 1703:17, 1703:21, 1704:13, 1704:17, 1704:18, 1706:15, 1706:19, 1707:23, 1709:2, 1709:7, 1709:17, 1709:19, 1711:17, 1712:9, 1712:10, 1712:15, 1712:17, 1713:4, 1723:7, 1723:22, 1723:25, 1725:24, 1726:9, 1727:3, 1727:17, 1729:19, 1729:22, 1730:6, 1730:11, 1730:16, 1730:20, 1731:16, 1731:25, 1732:15, 1732:20, 1732:23, 1733:2, 1733:7, 1733:15, 1733:23, 1734:7, 1735:17, 1737:9, 1737:11, 1737:12, 1737:21, 1741:19, 1742:5, 1742:14, 1742:18, 1743:7, 1743:19, 1745:10, 1745:20, 1750:10, 1750:13, 1750:20, 1751:5, 1755:7, 1780:11, 1780:16, 1780:20, 1780:21, 1781:15, 1782:15, 1785:6, 1785:10, 1809:24, 1810:5, 1810:15, 1810:22, 1810:24, 1811:2, 1811:8, 1812:7, 1812:13, 1812:16, 1813:1, 1814:1, 1814:10, 1815:10, 1815:16, 1817:4, 1817:12, 1818:6, 1818:20, 1819:3, 1819:4, 1819:7, 1819:13, 1821:2, 1821:10, 1821:18, 1821:25, 1823:22, 1824:3, 1824:7, 1824:11, 1824:12, 1824:24, 1825:6, 1825:11, 1825:21, 1826:20, 1827:9, 1827:24, 1829:12, 1829:13, 1831:11, 1831:20, 1832:6, 1832:10, 1832:15, 1832:16, 1832:17, 1833:10, 1834:10, 1834:23, 1835:8, 1835:13, 1835:17, 1836:9,</p>	<p>1836:10, 1836:22, 1836:24, 1838:15, 1838:17, 1839:5, 1839:11, 1840:3, 1840:18, 1841:25, 1843:17, 1845:1, 1854:21, 1855:10, 1855:15, 1855:18, 1856:4, 1856:10, 1856:17, 1856:20, 1863:17, 1865:9</p> <p>Vaughn's ^[5] - 1661:25, 1662:19, 1668:18, 1782:17, 1835:2</p> <p>verbatim ^[2] - 1747:12, 1752:21</p> <p>verbs ^[1] - 1652:5</p> <p>verdict ^[7] - 1721:6, 1771:13, 1772:11, 1773:13, 1869:2, 1869:4, 1869:9</p> <p>verify ^[5] - 1817:6, 1817:10, 1818:16, 1841:1, 1841:8</p> <p>verifying ^[1] - 1760:24</p> <p>vernacular ^[1] - 1831:15</p> <p>version ^[6] - 1818:4, 1818:7, 1818:8, 1818:9, 1823:9, 1823:10</p> <p>versus ^[1] - 1708:20</p> <p>veteran ^[1] - 1774:5</p> <p>vetted ^[1] - 1796:11</p> <p>vexing ^[1] - 1668:14</p> <p>via ^[1] - 1717:11</p> <p>Vic ^[1] - 1700:20</p> <p>Vic's ^[1] - 1700:19</p> <p>vicinity ^[1] - 1651:21</p> <p>video ^[1] - 1707:5</p> <p>vigilant ^[1] - 1869:18</p> <p>vijai ^[1] - 1686:24</p> <p>Vijai ^[5] - 1687:2, 1687:8, 1687:11, 1687:15</p> <p>Vijai's ^[1] - 1687:2</p> <p>Vijay ^[13] - 1664:8, 1664:13, 1664:16, 1665:4, 1665:9, 1665:10, 1665:11, 1665:12, 1667:1, 1691:19, 1695:2, 1712:15</p> <p>violate ^[3] - 1782:22, 1811:1, 1866:17</p> <p>violated ^[1] - 1788:10</p> <p>violation ^[1] - 1805:23</p> <p>violence ^[17] - 1643:14, 1677:10, 1678:7, 1700:11, 1702:8, 1704:10, 1704:21, 1704:23, 1705:4, 1771:5, 1790:4, 1791:7, 1828:17, 1828:18, 1828:19, 1828:23</p> <p>violent ^[16] - 1643:10, 1645:5, 1648:14, 1648:15, 1651:25, 1677:8, 1677:16, 1677:20, 1680:23, 1683:2, 1725:7, 1725:16, 1728:16, 1728:25, 1801:8, 1837:1</p> <p>Visa ^[1] - 1724:16</p> <p>visa ^[8] - 1732:23, 1739:15, 1811:3, 1848:23, 1848:24, 1848:25</p> <p>visit ^[12] - 1679:18, 1713:11, 1715:12, 1732:21, 1786:6, 1786:12, 1786:13, 1786:24, 1791:2, 1793:15, 1843:8, 1843:10</p> <p>visited ^[4] - 1753:15, 1766:18, 1786:14, 1859:23</p> <p>visiting ^[10] - 1732:19, 1794:22, 1795:3, 1795:4, 1795:6, 1795:7,</p>

<p>1796:10, 1796:13, 1826:3, 1826:4 visitor's [1] - 1679:17 visitors [1] - 1796:11 vitality [1] - 1780:4 voice [4] - 1706:14, 1824:10, 1828:24, 1836:1 voluntarily [2] - 1710:23, 1848:19 volunteer [1] - 1656:14</p>	<p>1832:22 week [2] - 1710:16, 1858:8 weekend [1] - 1641:3 weeks [5] - 1721:14, 1745:2, 1776:11, 1836:16, 1863:25 weighs [1] - 1760:8 weight [2] - 1825:9, 1868:9 whatsoever [2] - 1722:11, 1727:5 whereabouts [2] - 1765:8, 1833:1 whereby [1] - 1732:6 whiff [1] - 1810:9 White [2] - 1708:9, 1820:6 white [4] - 1777:5, 1790:25, 1791:1, 1831:23 whoa [2] - 1648:15, 1790:23 whole [25] - 1656:10, 1656:22, 1661:18, 1663:21, 1676:6, 1682:2, 1682:5, 1724:1, 1724:20, 1729:7, 1733:25, 1737:20, 1739:17, 1742:17, 1743:8, 1762:23, 1766:4, 1767:8, 1772:14, 1792:7, 1822:16, 1822:18, 1835:3, 1843:22, 1848:13 wide [2] - 1655:22, 1759:22 widespread [1] - 1865:23 wife [5] - 1697:11, 1698:5, 1701:14, 1811:4, 1867:4 wiggle [5] - 1828:4, 1828:11, 1829:10, 1863:22 Willabus [3] - 1646:3, 1646:10, 1647:20 Willems [6] - 1646:24, 1647:18, 1691:24, 1691:25, 1754:16, 1757:20 William [1] - 1717:18 willing [15] - 1652:16, 1673:18, 1674:22, 1674:23, 1680:11, 1700:17, 1704:25, 1705:1, 1706:5, 1712:24, 1817:14, 1848:22, 1849:17, 1855:16, 1867:10 willingness [1] - 1678:14 win [5] - 1756:7, 1756:10, 1756:12, 1853:25, 1854:3 window [3] - 1756:16, 1756:18, 1810:17 wink [2] - 1839:16 wins [1] - 1854:17 wire [3] - 1718:7, 1718:25, 1782:7 wiretap [4] - 1687:10, 1715:25, 1719:15, 1806:21 wiretapping [2] - 1719:4, 1720:13 wiretaps [3] - 1782:6, 1782:8, 1803:12 wish [2] - 1862:1, 1862:8 wishes [1] - 1644:1 withdrawn [1] - 1810:21 withheld [1] - 1776:21 withholding [1] - 1851:13 witness [68] - 1641:10, 1650:12, 1650:14, 1660:19, 1660:25, 1661:4, 1661:12, 1664:22, 1667:25, 1668:12, 1681:25, 1683:9, 1687:9, 1692:18, 1697:4, 1697:24, 1698:11, 1698:24,</p>	<p>1699:24, 1708:3, 1711:7, 1711:15, 1714:22, 1736:10, 1759:17, 1759:18, 1767:13, 1767:16, 1775:15, 1776:19, 1776:22, 1777:21, 1779:13, 1781:22, 1782:11, 1783:3, 1787:23, 1797:8, 1797:9, 1804:25, 1818:23, 1819:5, 1821:5, 1821:15, 1822:15, 1822:20, 1823:4, 1825:13, 1830:10, 1830:12, 1830:14, 1830:16, 1831:3, 1831:5, 1832:16, 1833:17, 1833:22, 1840:12, 1841:11, 1842:9, 1842:10, 1844:19, 1845:19, 1846:17, 1848:12, 1852:16 witness [1] - 1849:8 witnesses [44] - 1643:2, 1643:5, 1643:11, 1658:24, 1661:10, 1661:22, 1672:19, 1673:4, 1673:12, 1677:17, 1682:22, 1704:19, 1711:4, 1712:11, 1712:17, 1714:15, 1743:17, 1744:18, 1772:6, 1777:8, 1777:10, 1778:18, 1785:25, 1788:9, 1815:12, 1815:13, 1818:12, 1822:2, 1822:4, 1822:5, 1822:10, 1823:12, 1823:25, 1824:13, 1828:19, 1828:21, 1831:12, 1831:21, 1835:22, 1847:7, 1848:14, 1848:17 wives [1] - 1796:13 woman [6] - 1703:6, 1703:16, 1715:4, 1795:17, 1833:3, 1833:8 woman's [1] - 1715:18 won [2] - 1854:20, 1854:21 wonder [1] - 1685:5 wondering [2] - 1855:4, 1864:14 word [18] - 1667:17, 1673:25, 1719:1, 1746:15, 1792:18, 1795:2, 1797:4, 1821:17, 1821:19, 1822:23, 1825:16, 1825:18, 1830:7, 1853:14, 1861:10, 1861:13 words [52] - 1642:11, 1643:12, 1658:17, 1659:17, 1670:25, 1697:23, 1699:20, 1732:12, 1737:16, 1764:23, 1767:10, 1776:15, 1776:16, 1776:18, 1780:2, 1780:3, 1781:7, 1800:17, 1806:13, 1807:5, 1807:11, 1807:20, 1808:18, 1811:17, 1814:6, 1815:22, 1816:1, 1818:7, 1823:5, 1828:5, 1828:8, 1829:13, 1831:4, 1831:6, 1831:17, 1831:18, 1832:22, 1840:11, 1845:6, 1856:25, 1861:20, 1868:5, 1868:6, 1868:8 works [9] - 1703:19, 1716:16, 1717:17, 1718:1, 1720:19, 1763:4, 1803:11, 1814:15, 1817:22 world [2] - 1738:6, 1864:2 worry [3] - 1668:16, 1668:17, 1758:5 worse [5] - 1677:24, 1800:21, 1800:22, 1807:24, 1864:5 worst [1] - 1790:3 worth [4] - 1686:18, 1706:13, 1706:21, 1724:14 worthy [1] - 1822:22 wow [1] - 1792:19</p>
W		
<p>Waddell [3] - 1645:7, 1645:16, 1646:12 Wadel [3] - 1833:1, 1833:2, 1837:4 Wait [1] - 1792:13 wait [5] - 1671:23, 1672:1, 1672:2, 1674:2, 1770:24 Waite [9] - 1714:1, 1714:2, 1714:6, 1715:4, 1715:5, 1715:8, 1715:22, 1793:1, 1794:12 waite [3] - 1794:14, 1795:13, 1796:22 Waite's [1] - 1714:15 waite's [1] - 1794:4 waited [1] - 1864:20 waiting [2] - 1695:6, 1808:13 walk [3] - 1655:6, 1748:9, 1803:17 walked [5] - 1715:2, 1803:18, 1810:5, 1810:6, 1834:15 walks [5] - 1662:1, 1706:19, 1707:17, 1775:13, 1809:24 Wallace [1] - 1773:12 wants [50] - 1646:8, 1650:15, 1653:14, 1667:9, 1670:17, 1670:20, 1670:22, 1671:23, 1677:4, 1678:24, 1680:1, 1680:14, 1681:13, 1687:7, 1688:10, 1689:18, 1696:6, 1696:8, 1696:13, 1696:19, 1707:2, 1707:3, 1707:18, 1708:18, 1709:14, 1709:18, 1715:12, 1720:7, 1725:18, 1739:10, 1739:16, 1744:22, 1766:16, 1768:2, 1773:23, 1773:25, 1822:5, 1822:6, 1822:7, 1822:9, 1843:24, 1851:17, 1852:9, 1853:16, 1855:19, 1856:16, 1857:9 warden [3] - 1793:3, 1794:5, 1795:8 warm [2] - 1647:11, 1832:2 warrant [2] - 1760:17, 1760:25 Washington [1] - 1866:7 waste [1] - 1695:18 watch [1] - 1861:19 watched [1] - 1803:18 watching [2] - 1837:7, 1838:7 wave [1] - 1860:11 waves [1] - 1805:1 ways [5] - 1711:6, 1803:11, 1830:12, 1830:13, 1858:2 weak [2] - 1700:9, 1700:12 weapon [3] - 1667:5, 1672:4, 1704:18 wear [2] - 1652:4, 1700:11 wearing [3] - 1654:11, 1832:12,</p>		

write ^[23] - 1699:20, 1736:22, 1738:7, 1739:20, 1746:11, 1746:15, 1746:24, 1746:25, 1747:1, 1747:8, 1747:11, 1747:15, 1747:17, 1747:25, 1750:1, 1755:22, 1760:21, 1793:4, 1793:6, 1793:7, 1796:1

writes ^[5] - 1746:13, 1747:2, 1752:21, 1755:23, 1803:22

writing ^[3] - 1671:24, 1672:1, 1774:6

written ^[7] - 1662:5, 1685:20, 1699:17, 1720:12, 1729:18, 1820:6, 1860:23

wrong-headed ^[1] - 1792:7

wrongdoers ^[1] - 1832:19

wrongdoing ^[1] - 1823:24

wrongfully ^[3] - 1805:20, 1805:21, 1866:3

wrote ^[15] - 1701:22, 1738:16, 1746:20, 1752:12, 1768:15, 1784:23, 1793:10, 1793:15, 1795:25, 1796:1, 1853:11, 1860:21, 1860:22, 1861:3

Y

year ^[2] - 1762:4, 1775:13

years ^[19] - 1657:2, 1668:13, 1702:12, 1715:7, 1733:18, 1733:21, 1734:6, 1736:5, 1774:5, 1777:4, 1777:24, 1788:16, 1788:17, 1807:3, 1809:17, 1852:23, 1853:23, 1853:24, 1868:21

YORK ^[1] - 1639:1

York ^[14] - 1639:5, 1639:23, 1697:4, 1698:25, 1699:8, 1699:24, 1699:25, 1716:12, 1719:17, 1751:19, 1783:6, 1787:11, 1846:25, 1865:22

young ^[4] - 1644:12, 1707:6, 1722:2, 1797:9

yourself ^[4] - 1655:11, 1661:16, 1770:17, 1816:15

yourselves ^[5] - 1714:14, 1714:17, 1716:18, 1769:21, 1815:15

youth ^[1] - 1662:18

Yvonne ^[1] - 1676:18

Z

zealous ^[1] - 1866:25

zealousness ^[1] - 1854:6